

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1076

ORIGINAL

~~4192~~

B
P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

JOHN R. MARTIN, ROBERT J. RUTKOWSKI and THEIL
TECHNICAL SERVICES, INCORPORATED,

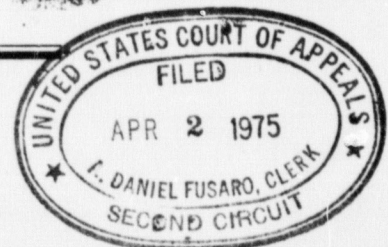
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

SUTTER, MOFFATT, YANNELLI & ZEVIN, P.C.
Attorneys for Defendants-Appellants,
33 Willis Avenue
Mineola, New York 11501

DAVID G. TRAGER
U. S. Attorney
Eastern District of New York
Attorney for Appellee
225 Cadman Plaza East
Brooklyn, New York 11201



3

PAGINATION AS IN ORIGINAL COPY

INDEX

	PAGE
Indictment #74 CR 588	1a
Indictment #74 CR 717	8a
Title 41 U.S. Code, § 51	11a
Title 41 U.S. Code, § 52	12a
Title 41 U.S. Code, § 54	13a
Title 10 U.S. Code, § 2304	13a
Title 10 U.S. Code, § 2305	18a
Title 10 U.S. Code, § 2310	19a
Extracts of Trial Minutes	20a
Testimony of Howard Dunn	20a
Sidebar Colloquies and Stipulations	112a
Defendants' Motion Pursuant to Rule 29	138a
DePetrís Summation (in Part)	145a
Court's Charge (in Part)	146a
Government Exhibit 34	152a

Indictment No. 74 CR 588.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

against

JOHN R. MARTIN, ROBERT J. RUTKOWSKI and THEIL
TECHNICAL SERVICES, INCORPORATED,

Defendants.

THE GRAND JURY CHARGES:

(1) At all times material hereto, the Grumman Aerospace Corporation, Bethpage, New York, was a prime contractor holding negotiated contracts entered into and by the United States Navy, an agency of the United States, for the furnishing of supplies, materials, equipment and services to the United States Navy.

(2) At all times material hereto, Olav Andreassen and William George Sheridan were employees and agents of the Grumman Aerospace Corporation, Bethpage, New York.

(3) At all times material hereto, the defendant, Theil Technical Services, Incorporated, Franklin Square, New York, was a subcontractor of the Grumman Aerospace Corporation holding an agreement to perform part of the work and to make and furnish articles and services, that is: writings, technical documents, manuals and publications required for the performance of the aforesaid negotiated contracts by the Grumman Aerospace Corporation.

Indictment No. 74 CR 588.

(4) At all times material hereto, the defendant, John R. Martin was President of Theil Technical Services, Incorporated.

(5) At all times material hereto, the defendant Robert J. Rutkowski, was General Manager of Theil Technical Services, Incorporated.

COUNT ONE

From in or around January, 1971 to in or about January 8, 1974, within the eastern District of New York, the defendants John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, together with Olav Andreassen, herein named as a co-conspirator but not as a co-defendant, did knowingly and wilfully combine and conspire to defraud the United States of America and to commit offenses against the United States of America in violation of Title 41, United States Code, Section 51 and Section 54, by conspiring to knowingly pay, grant and receive fees, commissions, compensations, gifts and gratuities made by and on behalf of Theil Technical Services, Incorporated, to employees and agents of the Grumman Aerospace Corporation as inducements for the award of subcontracts and orders to Theil Technical Services, Incorporated from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded.

It was a part of said conspiracy that the defendants, John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, together with Olav Andreassen would and did conspire to hamper, hinder, frustrate and impede by craft, trickery, and dishonest means, including kick backs, the lawful and legitimate functions, operations and purpose of the United States Navy, an

Indictment No. 74 CR 588.

agency of the United States of America, in the administration of its contracts with the Grumman Aerospace Corporation, including the right to have the giving and awarding of subcontracts and purchase orders by the Grumman Aerospace Corporation to various suppliers therein free from chicanery and taint.

In furtherance of the aforementioned conspiracy and to effectuate the purposes thereof, the defendants, John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, together with Olav Andreassen, herein named as a co-conspirator but not as a co-defendant, committed the following:

OVERT ACTS

1. On or about May 4, 1973, within the Eastern District of New York, the defendant John R. Martin met with Olav Anddreassen.
2. On or about July 13, 1973, within the Eastern District of New York, the defendant John R. Martin met with Olav Andreassen.
3. On or about November 29, 1973, within the Eastern District of New York, the defendant John R. Martin met with Olav Andreassen.
4. On or about January 8, 1974, within the Eastern District of New York, the defendant Robert J. Rutkowski met with Olav Andreassen.

(Title 18, United States Code, Section 371).

COUNT TWO

On or about the 13th day of February 1973, within the Eastern District of New York, the defendants, John R.

Indictment No. 74 CR 588.

Martin and Theil Technical Services, Incorporated, directly and indirectly, and on behalf of a subcontractor, to wit: Theil Technical Services, Incorporated, did knowingly give to Olav Andreassen a fee, commission, compensation, gift and gratuity, that is, a check drawn to A & D Contractors in the amount of \$1,000, as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgment of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to Theil Technical Services, Incorporated. (Title 41, United States Code, § 51 and § 54; and Title 18, United States Code, § 2)

COUNT THREE

On or about the 4th day of May 1973, within the Eastern District of New York, the defendants, John R. Martin and Theil Technical Services, Incorporated, directly and indirectly, and on behalf of subcontractor, to wit: Theil Technical Services, Incorporated, did knowingly give to Olav Andreassen a fee, commission, compensation, gift and gratuity, that is, a check drawn to A & D Contractors in the amount of \$1,000, as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgment of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to Theil Technical Services, Incorporated. (Title 41, United States Code, § 51 and § 54; and Title 18, United States Code, § 2)

COUNT FOUR

On or about the 13th day of July 1973, within the Eastern District of New York, the defendants, John R. Martin and Theil Technical Services, Incorporated, directly and indirectly, and on behalf of a subcontractor, to wit: Theil

Indictment No. 74 CR 588.

Technical Services, Incorporated, did knowingly give to Olav Andreassen a fee, commission, compensation, gift and gratuity, that is, a check drawn to A & D Contractors in the amount of \$1,000, as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to Theil Technical Services, Incorporated. (Title 41, United States Code, § 51 and § 54; and Title 18, United States Code, § 2)

COUNT FIVE

On or about the 8th day of January 1974, within the Eastern District of New York, the defendants, John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, directly and indirectly, and on behalf of a subcontractor, to wit: Theil Technical Services, Incorporated, did knowingly give to Olav Andreassen a fee, commission, compensation, gift and gratuity, that is, the sum of \$500, in United States currency as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgment of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to Theil Technical Services, Incorporated. (Title 41, United States Code, § 51 and § 54; and Title 18, United States Code, § 2)

COUNT SIX

From in or around summer, 1972 to in or about January 14, 1974, within the Eastern District of New York, the defendants, John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, together with William George Sheridan, herein named as a co-conspirator but not as a co-defendant, did knowingly and wilfully combine and

Indictment No. 74 CR 588.

conspire to defraud the United States of America and to commit offenses against the United States of America in violation of Title 41, United States Code, Section 51 and Section 54, by conspiring to knowingly pay, grant and receive fees, commissions, compensations, gifts and gratuities made by and on behalf of Theil Technical Services, Incorporated to employees and agents of the Grumman Aerospace Corporation as inducements for the award of subcontracts and orders to Theil Technical Services, Incorporated from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded.

It was a part of said conspiracy that the defendants, John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, together with William George Sheridan would and did conspire to hamper, hinder, frustrate and impede by craft, trickery, and dishonest means, including kick backs, the lawful and legitimate functions, operations and purpose of the United States Navy, an agency of the United States of America, in the administration of its contracts with the Grumman Aerospace Corporation, including the right to have the giving and awarding of subcontracts and purchase orders by the Grumman Aerospace Corporation to various suppliers therein free from chicanery and taint.

In furtherance of the aforementioned conspiracy and to effectuate the purposes thereof, the defendants John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, together with William George Sheridan, herein named as a co-conspirator but not as a co-defendant, committed the following:

OVERT ACTS

1. On or about February 6, 1973, within the Eastern District of New York, the defendant Robert J.

Indictment No. 74 CR 588.

Rutkowski submitted a bid to the Grumman Aerospace Corporation on behalf of Theil Technical Services, Incorporated, pursuant to Grumman's ITQ B 040601 and B 040602.

2. In or about March, 1973, within the Eastern District of New York, the defendant, John R. Martin gave William George Sheridan a trip to the Playboy Club, Great George, New Jersey.
3. On or about July 10, 1973, within the Eastern District of New York, the defendant Robert J. Rutkowski submitted a bid to the Grumman Aerospace Corporation on behalf of Theil Technical Services, Incorporated.

(Title 18, United States Code, Section 371)

COUNT SEVEN

In or around December, 1973, within the Eastern District of New York, the defendants, John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, directly and indirectly, and on behalf of a subcontractor, to wit: Theil Technical Services, Incorporated, did knowingly give to William George Sheridan a fee, commission, compensation, gift and gratuity, that is, \$500 in United States currency, as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to Theil Technical Services, Incorporated. (Title 41, United States Code, § 51 and § 54; and Title 18, United States Code, § 2).

A True Bill.

.....
Foreman.

.....
United States Attorney

Indictment No. 74 CR 717.

THE GRAND JURY CHARGES:

(1) At all times material hereto, the Grumman Aerospace Corporation, Bethpage, New York, was a prime contractor holding negotiated contracts entered into and by the United States Navy, an agency of the United States, for the furnishing of supplies, materials, equipment and services to the United States Navy.

(2) At all times material hereto, William George Sheridan was an employee and agent of the Grumman Aerospace Corporation, Bethpage, New York.

(3) At all times material hereto, the defendant Thiel Technical Services, Incorporated, Franklin Square, New York, was a subcontractor of the Grumman Aerospace Corporation holding an agreement to perform part of the work and to make and furnish articles and services, that is: writings, technical documents, manuals and publications required for the performance of the aforesaid negotiated contracts by the Grumman Aerospace Corporation.

(4) At all times material hereto, the defendant John R. Martin was President of Thiel Technical Services, Incorporated.

(5) At all times material hereto, the defendant Robert J. Rutkowski was General Manager of Thiel Technical Services, Incorporated.

COUNT ONE

From in or around the summer of 1972 to on or about January 14, 1974, within the Eastern District of New York, the defendants John R. Martin, Robert J. Rutkowski and Thiel Technical Services, Incorporated, together with William George Sheridan, herein named as a co-conspirator but not as a co-defendant, did knowingly and wilfully combine and conspire to defraud the United States of America

Indictment No. 74 CR 717.

and to commit offenses against the United States of America in violation of Title 41, United States Code, Section 51 and Section 54, by conspiring to knowingly pay, grant and receive fees, commissions, compensations, gifts and gratuities made by and on behalf of Theil Technical Services, Incorporated to employees and agents of the Grumman Aerospace Corporation as inducements for the award of subcontracts and orders to Theil Technical Services, Incorporated from the Grumman Aerospace Corporation and as an acknowledgment of subcontracts and orders previously awarded.

It was a part of said conspiracy that the defendants John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, together with William George Sheridan would and did conspire to hamper, hinder, frustrate and impede by craft, trickery, and dishonest means, including kick backs, the lawful and legitimate functions, operations and purpose of the United States Navy, an agency of the United States of America, in the administration of its contracts with the Grumman Aerospace Corporation, including the right to have the giving and awarding of subcontracts and purchase orders by the Grumman Aerospace Corporation to various suppliers therein free from chicanery and taint.

In furtherance of the aforementioned conspiracy and to effectuate the purposes thereof, the defendants John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, together with William George Sheridan, herein named as a co-conspirator but not as a co-defendant, committed the following:

OVERT ACTS

1. On or about February 6, 1973, within the Eastern District of New York, the defendant Robert J. Rutkowski submitted a bid to the Grumman Aerospace Corporation on behalf of Theil Technical

Indictment No. 74 CR 717.

Services, Incorporated, pursuant to Grumman's ITQ B 040601 and B 040602.

2. In or about March, 1973, within the Eastern District of New York, the defendant John R. Martin gave William George Sheridan a trip to the Playboy Club, Great George, New Jersey.
3. On or about July 10, 1973, within the Eastern District of New York, the defendant Robert J. Rutkowski submitted a bid to the Grumman Aerospace Corporation on behalf of Theil Technical Services, Incorporated pursuant to Grumman's ITQ B 040630.

(Title 18, United States Code, Section 371)

COUNT TWO

In or around December 1973, within the Eastern District of New York, the defendants John R. Martin, Robert J. Rutkowski and Theil Technical Services, Incorporated, directly and indirectly, and on behalf of a subcontractor, to wit: Theil Technical Services, Incorporated, did knowingly give to William George Sheridan a fee, commission, compensation, gift and gratuity, that is, \$500 in United States currency, as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgment of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to Theil Technical Services, Incorporated (Title 41, United States Code, § 51 and § 54; Title 18, United States Code, § 2).

A TRUE BILL.

.....
Foreman

.....
DAVID G. TRAGER
United States Attorney
Eastern District of New York

Title 41 U.S. Code § 51.**§ 51. Fees or kick-backs by subcontractors on negotiated contracts; recovery by United States; conclusive presumptions; withholding of payments**

The payment of any fee, commission, or compensation of any kind or the granting of any gift or gratuity of any kind, either directly or indirectly, by or on behalf of a subcontractor, as defined in section 52 of this title, (1) to any officer, partner, employee, or agent of a prime contractor holding a negotiated contract entered into by any department, agency, or establishment of the United States for the furnishing of supplies, materials, equipment or services of any kind whatsoever; or to any such prime contractor or (2) to any officer, partner, employee, or agent of a higher tier subcontractor holding a subcontract under the prime contract, or to any such subcontractor either as an inducement for the award of a subcontract or order from the prime contractor or any subcontractor, or as an acknowledgment of a subcontract or order previously awarded, is prohibited. The amount of any such fee, commission, or compensation or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid or incurred by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. The amount of any such fee, cost, or expense shall be recoverable on behalf of the United States from the subcontractor or the recipient thereof by setoff of moneys otherwise owing to the subcontractor either directly by the United States, or by a prime contractor under any contract or by an action in an appropriate court of the United States. Upon a showing that a subcontractor paid fees, commissions, or compensation or granted gifts or gratuities to an officer, partner, employee, or agent of a prime contractor or of another higher tier subcontractor,

Title 41 U.S. Code § 52.

tor, in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the cost of such expense was included in the price of the subcontract or order and ultimately borne by the United States. Upon the direction of the contracting department or agency or of the General Accounting Office, the prime contractor shall withhold from sums otherwise due a subcontractor any amount reported to have been found to have been paid by a subcontractor as a fee, commission, or compensation or as a gift or gratuity to an officer, partner, employee, or agent of the prime contractor or another higher tier subcontractor. Mar. 8, 1946, c. 80, § 1, 60 Stat. 37; Sept. 2, 1960, Pub.L. 86-695, 74 Stat. 740.

Title 41 U.S. Code § 52.**§ 52. Same; definitions**

For the purpose of sections 51-54 of this title, the term "subcontractor" is defined as any person, including a corporation, partnership, or business association of any kind, who holds an agreement or purchase order to perform all or any part of the work or to make or to furnish any article or service required for the performance of a negotiated contract or of a subcontract entered into thereunder; the term "person" shall include any subcontractor, corporation, association, trust, joint-stock company, partnership, or individual; and the term "negotiated contract" means made without formal advertising. Mar. 8, 1946, c. 80, § 2, 60 Stat. 38; Sept. 2, 1960, Pub.L. 86-695, 74 Stat. 740.

Title 41 U.S. Code § 54.**§ 54. Same; penalties**

Any person who shall knowingly, directly or indirectly, make or receive any such prohibited payment shall be fined not more than \$10,000 or be imprisoned for not more than two years, or both. Mar. 8, 1946, c. 80, § 4, 60 Stat. 38; Sept. 2, 1960, Pub.L. 86-695, 74 Stat. 741.

Title 10 U.S. Code § 2304.**§ 2304. Purchases and contracts: formal advertising; exceptions**

(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. If use of such method is not feasible and practicable, the head of an agency, subject to the requirements for determinations and findings in section 2310, may negotiate such a purchase or contract, if—

(1) it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President;

(2) the public exigency will not permit the delay incident to advertising;

(3) the aggregate amount involved is not more than \$10,000;

(4) the purchase or contract is for personal or professional services;

(5) the purchase or contract is for any service by a university, college, or other educational institution;

Title 10 U.S. Code § 2304.

(6) the purchase or contract is for property or services to be procured and used outside the United States and the Territories, Commonwealths, and possessions;

(7) the purchase or contract is for medicine or medical supplies;

(8) the purchase or contract is for property for authorized resale;

(9) the purchase or contract is for perishable or nonperishable subsistence supplies;

(10) the purchase or contract is for property or services for which it is impracticable to obtain competition;

(11) the purchase or contract is for property or services that he determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research;

(12) the purchase or contract is for property or services whose procurement he determines should not be publicly disclosed because of their character, ingredients, or components;

(13) the purchase or contract is for equipment that he determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability;

(14) the purchase or contract is for technical or special property that he determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising would be likely to result in

Title 10 U.S. Code § 2304.

additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;

(15) the purchase or contract is for property or services for which he determines that the bid prices received after formal advertising are unreasonable as to all or **part of the requirements**, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier;

(16) he determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved; or

(17) negotiation of the purchase or contract is otherwise authorized by law.

(b) The data respecting the negotiation of each purchase or contract under clauses (1) and (7)-(17) of subsection (a) shall be kept by the contracting agency for six years after the date of final payment on the contract.

(c) This section does not authorize—

Title 10 U.S. Code § 2304.

(1) the negotiation of a contract to construct or repair any building, road, sidewalk, sewer main, or similar item, unless—

(A) it is made under clauses (1)-(3), (10)-(12), or (15) of subsection (a); or

(B) it is to be performed outside the United States; or

(2) the erection, repair, or furnishing of any public building or public improvement.

(d) Whenever the head of the agency determines it to be practicable, such advance publicity as he considers suitable with regard to the property involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for property, or a service, under clause (7) or (8) of subsection (a) involving more than \$10,000.

(e) A report shall be made to Congress, on May 19 and November 19 of each year, of the purchases and contracts made under clauses (11) and (16) of subsection (a) during the period since the date of the last report. The report shall—

(1) name each contractor;

(2) state the amount of each contract; and

(3) describe, with consideration of the national security, the property and services covered by each contract.

(f) For the purposes of the following laws, purchases or contracts negotiated under this section shall be treated as if they were made with formal advertising:

(1) Sections 35-45 of title 41.

Title 10 U.S. Code § 2304.

(2) Sections 276a-276a-5 of title 40.

(3) Sections 324 and 325a of title 40.

(g) In all negotiated procurements in excess of \$10,000 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals, including price, shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured, and written or oral discussion shall be conducted with all responsible offerors who submit proposals within a competitive range, price, and other factors considered: *Provided, however,* That the requirements of this subsection with respect to written or oral discussions need not be applied to procurements in implementation of authorized set-aside programs or to procurements where it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and reasonable prices and where the request for proposals notifies all offerors of the possibility that award may be made without discussion.

(h) Except in a case where the Secretary of Defense determines that military requirements necessitate specification of container sizes, no contract for the carriage of Government property in other than Government-owned cargo containers shall require carriage of such property in cargo containers of any stated length, height, or width.

Title 10 U.S. Code § 2305.**§ 2305. Formal advertisements for bids; time; opening; award; rejection**

(a) Whenever formal advertising is required under section 2304 of this title, the advertisement shall be made a sufficient time before the purchase or contract. The specifications and invitations for bids shall permit such free and full competition as is consistent with the procurement of the property and services needed by the agency concerned. Except in a case where the Secretary of Defense determines that military requirements necessitate specification of container sizes, no advertisement or invitation to bid for the carriage of Government property in other than Government-owned cargo containers shall specify carriage of such property in cargo containers of any stated length, height, or width.

(b) The specifications in invitations for bids must contain the necessary language and attachments, and must be sufficiently descriptive in language and attachments, to permit full and free competition. If the specifications in an invitation for bids do not carry the necessary descriptive language and attachments, or if those attachments are not accessible to all competent and reliable bidders, the invitation is invalid and no award may be made.

(c) Bids shall be opened publicly at the time and place stated in the advertisement. Awards shall be made with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the United States, price and other factors considered. However, all bids may be rejected if the head of the agency determines that rejection is in the public interest.

(d) If the head of the agency considers that any bid received after formal advertising evidences a violation of the antitrust laws, he shall refer the bid to the Attorney General for appropriate action.

Title 10 U.S. Code § 2310.**§ 2310. Determinations and decisions**

(a) Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or for a class of purchases or contracts. Such a determination or decision is final.

(b) Each determination or decision under clauses (11)-(16) of section 2304(a), section 2306(c), section 2306(g)(1), section 2307(c), or section 2313(e) of this title and a decision to negotiate contracts under clauses (2), (7), (8), (10), (12), or for property or supplies under clause (11) of section 2304(a), shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that (1) are clearly illustrative of the conditions described in clauses (11)-(16) of section 2304(a), (2) clearly indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract, (3) support the findings required by section 2306(g)(1), (4) clearly indicate why advance payments under section 2307(c) would be in the public interest, (5) clearly indicate why the application of section 2313(b) to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest, or (6) clearly and convincingly establish with respect to the use of clauses (2), (7), (8), (10), (12), and for property or supplies under clause (11) of section 2304(a), that formal advertising would not have been feasible and practicable. Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.

EXTRACTS OF
TRIAL MINUTES

HS:BD 1
2pml

THE COURT: Thank you, gentlemen.

Call your first witness, please.

MR. DE PETRIS: The Government calls Howard
Dunn.

H O W A R D J . D U N N , J R . , having been first
duly sworn the the Clerk of the Court, testified as
follows:

THE CLERK: State your full name.

THE WITNESS: Howard J. Dunn, Jr., D-u-n-n.

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q Would you please state your name to the jury?

A Howard J. Dunn, Jr.

Q Mr. Dunn, by whom are you employed?

A Currently employed by the Grumman Corporation
as the Director of Corporate Audits.

Q What is the relation of the Grumman Corporation
to the Grumman Aerospace Corporation?

A Grumman Aerospace is born of some 20 affiliates.
Grumman Aerospace is owned 100 percent by the Grumman
Corporation.

Q What's your capacity with the Grumman Corpora-
tion?

A I am the Director of Corporate Audits for the
Grumman Corporation, responsible for all of its financial

1 Dunn-direct

2 operations. I have been in this position since June 1, 1973,
3 in that capacity responsible to audit all the financial
4 records of all the corporations of the Grumman company
5 including Grumman Aerospace.

6 Q Prior to June 1, 1973, in what capacity were
7 you employed?

8 A Well, I started with Grumman on March 15, 1960
9 in Grumman Aircraft and Engineering, which currently became
10 Grumman Aerospace. When I was transferred to the Grumman
11 Corporation, I was the Director of Corporate Audits, and
12 procedures for Grumman Aerospace, so in effect I was with
13 Grumman Aerospace from March of 1960 until June 1st of 1973.

14 Q How long were you director of Corporate Audits
15 for Grumman Aerospace Corporation?

16 A Since December of 1968.

17 Q What were your duties in that regard?

18 A In Grumman Aerospace I was responsible for
19 the auditing of Grumman Aerospace and also for the issuing
20 of all corporate notices, directives and procedures, liaison
21 with the Government, audit representative, general
22 accounting office, staff inquiries from the Senate and
23 Congressional inquiries.

24 Q During the years of your employment with
25 Grumman, where were you located?

3

1

Dunn-direct

2

3

A Well, I started -- I have always been in Bethpage.

4

5

Q That is what I meant.

6

A Bethpage, Long Island, New York.

7

Q Would you briefly describe to the jury the nature of the business of the Grumman Aerospace Corporation?

8

9

A Grumman Aerospace Corporation is basically engaged in the design and manufacture of various aircrafts and space systems for the United States Government.

10

11

12

13

14

15

16

17

18

19

In addition, the delivery of these vehicles to the Government, the Government also is required to purchase from Grumman Aerospace the different types of items that are necessary to support these vehicles, such as spare parts, support equipment, training and technical manuals. The technical manuals are necessary to describe how the various equipment functions, how they operate, how they are to be maintained, how they are to be repaired, if necessary.

20

21

22

23

24

25

The Publications department of Grumman Aerospace is responsible for the preparation and delivery of these manuals to the Government.

In the time frame of 1972 and 1973 there were approximately 290 to 300 people in the Grumman Aerospace Publications Department. They were part of an over-all product support department of approximately 2800 people.

Dunn-direct

The total population of Grumman Aerospace today is about 25,000 people. In the time frame of 1972 and 1973 it was about 23,000.

Q Could you tell us approximately what percentage of Grumman's business is with contracts with the United States Government?

A With Grumman Aerospace it is in the high 90's.

Q You mentioned the Publication Department. Is that the correct terminology?

A Yes.

Q Would you briefly describe to the jury the nature and the set-up of the Publication Department?

A Well, the Publication Department as I said previously reports to the Products Support Department and in the Publication Department is the director, assistant director and some staff people. Basically, it has program managers and program managers basically have the responsibility to supervise that all the publications within his specific program get delivered to the customer on time within budget. He also has to resolve any contractual or funding problems with the customer. He is responsible to manage all the new business efforts on his particular program. He has administrative efforts with all the people that work for him. He also has to monitor all the

5

1

Dunn-direct

2

subcontractors that come underneath him, so to speak.

3

4

5

6

7

Q What do you mean "a program?"

8

9

A Well, each aircraft model itself -- I will try to say this in simple terms.

10

11

12

13

14

15

16

17

18

19

The A6A is an aircraft that Grumman delivers to the Government. It has a particular function. It is a fighter aircraft that has been used in Vietnam. It is an all-weather fighter. The program manager in the Publications area would be responsible to deliver all the publications that were necessary to support these aircraft, when they go into the fleet, when they are in squadrons, overseas on combat. He's responsible for all publications necessary to Government personnel that will operate the equipment necessary to run this complex weapons system.

20

21

22

23

24

25

Q Do Publications include technical manuals?

A Basically yes.

Q Is the Publications Department responsible for those technical manuals?

A Yes, they are.

Q Do they produce them themselves or what?

25a

6 1

Dunn-direct

2

3

4

A The Publications Department produces some of them in-house and also subcontracts some of these manuals out.

5

6

In the time frame of 1972-'73 some 70 percent of the manuals were subcontracted out to others.

7

8

9

Q After the manuals are produced pursuant to the subcontract, were they for delivery to the United States Navy pursuant to its prime contract?

10

11

12

A Grumman has the responsibility to see that they are in accordance with the specifications within the Government's prime contract.

13

14

Q Now, is Olaf Andreassen an employee of Grumman from 1971 to the beginning of 1974?

15

16

A Yes, he was. He was the Publications program manager on the "Outer Production Aircraft Programs."

17

18

19

20

This encompassed some miscellaneous programs.

Q Was Robert Ragozzine a program supervisor?

19

20

A Yes, he was also a program supervisor on the E2/C2 programs.

21

22

23

Q Each different program supervisor was responsible for a different type aircraft -- application to a different type aircraft?

24

25

A Yes, the publication effort would be the same, but it would be for a different series aircraft.

26a

Dunn-direct

Q Underneath the program supervisor, are there various sections in the Publication Department?

A Yes, there are.

The largest group of people in the Publication Department are what we call the "technical writers."

Q What is the function of the technical writers?

A They're basically the personnel who are responsible to research and write these technical manuals.

They have to work very closely with the engineering people that design the parts.

Q What would their function be in the situation where there is a subcontractor?

A To monitor the subcontractor that came under the manual that the tech writer would be responsible for.

We also have technical illustrators. This is a group who basically are responsible to prepare illustrations or diagrams necessary to describe the techniques that a tech writer has written, pretty much I guess to use the simple illustration if you were to buy a TV set, along with the set comes a manual which has some description in it of how you install it and operate it. It would also have some pictures in it telling you to connect different tubes and so forth. It would have a parts listing in it. This is pretty much what a technical manual is, except we are talking

27a

Dunn-direct

about a more complicated thing where there are hundreds of thousands of parts on an aircraft. It would be that many more times more complicated.

Q Is there another subsection called the "Publication Control Section"?

A Yes.

Q What is the function of that subsection?

A This is a group that is responsible to independently maintain the records for the Publication Department. They interface with our customer, NASA or the United States Navy, our Contract department, and that's the department that is responsible to negotiate our prime contracts with the Government and with our Purchasing Department. They prepare in-house estimates on how much it will take our Publication Department to do a job and in many cases this would be compared independently with the estimates prepared by the vendors.

(Continued next page.)

MS/LH
2PM/2

28a
Dunn-direct

55

1

Q Do you mean --

A Sub-contractors.

They would also be responsible to monitor the budgets on each program and to approve the sub-contractors invoices and get it processed for payment.

Q Was William Sheridan an employee in the publication control section during the year 1971 to '74?

A Yes, he was.

Q Well who was his program supervisor?

A Mr. Sheridan, he had a couple of different programs, but basically Mr. Ragozzine and the E2C2 Program. I guess that's sufficient.

Q I would like to direct your attention to the procedures which were to be followed by the Publication Department with respect to sub-contractors.

First, let's define a few terms. Could you define for the jury the term "prime contractor?"

MR. SUTTER: Objection. I submit it is a question of law for the Court.

THE COURT: Is this the witness who was going to refer to the contracts -- the alleged contract with the Navy?

MR. DE PETRIS: Yes, your Honor.

THE COURT: Why don't you ask him to describe it.

1
2 Q Would you define your understanding of the
3 term "prime contractors"?

4 A Prime contractors in Grumman's case, we have
5 contracts negotiated with the United States Government. As
6 a result we have to make deliveries under those contracts
7 to the Government.

8 Q Directing your attention to contracts Grumman
9 had with the Navy involving technical and supportive
10 contracts, were those made without formal advertising --

11 MR. SUTTER: May we have a side bar?

12 THE COURT: Yes.

13 (The following transpired at the side bar.)

14 MR. SUTTER: I do not mean to unnecessarily
15 object.

16 THE COURT: That is quite all right.

17 MR. SUTTER: I would ask if you would give
18 consideration to instructing the jury what constitutes
19 a "time contract" and a "sub-contractors" or a
20 "Purchasing contract."

21 This is merely his opinion.

22 THE COURT: I do not understand why it is
23 necessarily a question of law. I think this is
24 descriptive so they understand the nature of the
25 relationship.

1
2 MR. SUTTER: The statute says they are defined
3 in Title 41.

4 THE COURT: Do you want me to take it out of
5 the hands of the jury and --

6 MR. SUTTER: I am asking your Honor to charge
7 them as to what the law requires.

8 (The following transpired in open court.)

9 THE COURT: Ladies and gentlemen, the witness
10 is using the phrase "prime contractor" and "sub-
11 contractor." This may be an issue of fact that you
12 have to determine. Although he may use the terms,
13 that doesn't mean necessarily that you must find that
14 the documents in question were "prime contracts."

15 Do you understand that? You will decide that
16 if I tell you to in the charge, based upon the
17 evidence and the Government like all other issues
18 will have to prove that beyond a reasonable doubt.

19 Is there anything else that you wish me to
20 instruct the jury?

21 MR. SUTTER: Nothing.

22 THE COURT: Proceed.

23 BY MR. DE PETRIS:

24 Q That is involving technical manuals and
25 supportive equipment, Mr. Dunn.

Dunn-direct

58

1
2 Were those contracts made without formal
3 advertising?

4 A Yes.

5 Q Now, would you define your understanding of
6 the term "sub-contractor?"

7 A A sub-contractor, my definition would be a
8 firm or company that Grumman would issue an order to do a
9 portion of a service, that I would consider a sub-contractor
10 of Grumman.

11 Q What's the relationship of the sub-contractor
12 to the prime contractor, with respect to the technical
13 manuals?

14 A They'd receive a purchase order and they'd
15 have to abide by the specifications of that purchase order
16 that they'd have with Grumman. It would be delivered to
17 Grumman.

18 Q After the technical manuals were delivered to
19 Grumman, what would Grumman do with them?

20 A It would be delivered to the Government.

21 Q I would like you to briefly explain to the
22 Court and jury the bidding procedures to be followed in the
23 publication department during the years '72 and '73?

24 MR. SUTTER: Objection.

25 THE COURT: You mean the internal Grumman

1
2 regulations?

3 MR. DE PETRIS: Just a brief description of
4 the procedures that were followed.

5 THE COURT: You said were to be followed.

6 MR. SUTTER: That was the basis of my objection.

7 THE COURT: What do you want?

8 MR. DE PETRIS: The procedures that were
9 supposed to be followed.

10 THE COURT: That Grumman's internal regulations
11 required?

12 MR. DE PETRIS: The practice that Grumman
13 required.

14 THE COURT: Better rephrase the question.

15 I am not sure that I understand what you want.

16 Q Mr. Dunn, prior to a sub-contract or purchase
17 order being awarded to a sub-contractor, were there certain
18 procedures followed by Grumman Aerospace Corporation?

19 A Yes.

20 Q Will you tell the Court and jury your under-
21 standing of those procedures in the years '72 and '73?

22 A Well, they are --

23 MR. SUTTER: I object as to his understanding.
24 I have no objection as to what the procedures were.

25 THE COURT: Rephrase the question, please.

1
2 Q Are you familiar with the procedures that
3 were followed --

4 A Yes, I am.

5 Q -- during those years?

6 Would you describe them to the jury?

7 A Yes.

8 Well, there were some very detailed procedures
9 on this, but let me try to recap for you my understanding
10 of it in more simple terms.

11 First, an order would be received from the
12 Government to prepare various manuals. A determination
13 would be made by the publication department as to whether
14 it could be done in house or whether it must be sub-contracted.
15 This would be contingent upon whether we had the technical
16 expertise to do the job in house or whether we had enough
17 manpower.

18 A power requisition would be prepared by the
19 program managers recommending at least three sub-contractors
20 who are qualified to do the job, if it were determined that
21 we'd do the job outside.

22 This would be approved by a make/buy committee.

23 Then the requisition would be forwarded to the
24 purchasing department. The purchasing department would call
25 the sub-contractors in that had been recommended by the

Dunn-direct

61

1
2 Publication Department and any others that they might have
3 added to the list. They would have a bidder's conference --

4 Q What was the purpose of that?

5 A At this conference they would give the bidders
6 all of the technical data that was necessary for them to
7 prepare a quotation. This would be engineering drawings, etc.
8 They would advise the bidders basically how many pages
9 Grumman estimated it would take to do the job, the amount of
10 illustrated pages, the number of illustrations and the
11 number of technical text pages.

12 If there were any questions that the bidders
13 had, at that time they would be answered.

14 The bidders would take this data home with them
15 and they would prepare an estimate of the hours in dollars
16 and the pages of text, illustration, etc. to do the job.
17 They would submit this information back to the Purchasing
18 Department on a very detailed form. It was called a DCD 636.

19 For every single technical manual, you'd have
20 to prepare one of those forms.

21 Those proposals would be opened by a group
22 in the Purchasing Department called a "Quotation Control
23 Group."

24 They'd all be opened on the same day, a day
25 that the quotations were due in and at that point they would

1
2 be opened.

3 Q Would the proposals contain a bid price by
4 each of the three bidders?

5 A Yes.

6 These bids would be sent to the buyer
7 responsible for the procurement. A copy of the bids would
8 be sent to the Publication Department for their evaluation.

9 However, this copy of the bid would not have
10 the vendor's name on it. It would be designated by the
11 Purchasing Department as a vendor A, B, C, D, etc., so that
12 they wouldn't know where the bids came from.

13 Publication would make their own evaluation
14 of these bids and would make a recommendation to purchasing
15 as to which vendor, A, B or C they would recommend to get
16 the job.

17 Basically, this would be the lowest bidder.
18 However, if all the bidders -- this would be true if all
19 the bidders were acceptable, there could be certain reasons
20 why one bidder might have the lowest price, but on what
21 particular item he has so underquoted one portion that if
22 you put a reasonable estimate on that portion of his bid,
23 he would no longer be low.

24 Purchasing would have the final decision as
25 to which vendor would be given the award.

1
2 I should note nowever, if a particular vendor
3 hadwon an award for a technical manual and there were some
4 changes to that manual, in most cases it would be the
5 recommendation of the Publication Department that he be the
6 only one to quote on the changes of the manual on the basis
7 that he was the most familiar with it and it would be
8 chearper in the long run rather than trying to submit those
9 out for open competition.

10 Q Would that be called a "sole source"?

11 A Yes.

12 Q Assuming that the three bidders, that they were
13 all qualified and all reasonable and within the budget, to
14 which sub-contractor would the purchase order be awarded?

15 A It should be the lowest bidder.

16 Q And thereafter would a purchase order be pre-
17 pared?

18 A A purchase order would be prepared by the
19 Purchasing Department and sent to the bidder. He would have
20 to sign it and send back an acceptance copy.

21 Q It would call for a particular technical
22 manual?

23 A At a certain price delivered at a certain date
24 in conformance with certain specifications.

25 MR. DE PETRIS: There was one file, could we

1
2 have a side bar.

3 THE COURT: Why don't you have the Clerk put
4 a new label on the file itself?

5 Any objection to this file?

6 MR. SUTTER: No, your Honor.

7 THE COURT: Mark it into evidence.

8 THE CLERK: File marked Government's Exhibit 5
9 in evidence.

10 MR. DE PETRIS: I believe these were all marked
11 in evidence. They are still marked for identification.
12 May we have them officially marked in evidence?

13 MR. SUTTER: They were.

14 THE CLERK: Government's Exhibits 1, 2, 3, 4
15 and 6 marked in evidence.

16 MR. DE PETRIS: Also Government's Exhibit 7,
17 9 and 9.

18 THE CLERK: Government's 7, 8 and 9 marked in
19 evidence.

20 Q I hand you Government's Exhibit 1 through 6
21 in evidence and I ask you to examine those.

22 (Documents shown to witness.)

23 A Yes.

24 Q Can you identify each of those files for us?

25 A Yes, I can.

1
2 Would you like me to go through them
3 individually for you?

4 Q Yes, just generally what they are.

5 A Basically they are purchase orders that have
6 been awarded to Thiel TEchnical Services Inc. by Grumman
7 Aerospace Corporation under Government contracts that we
8 had received.

9 Q Now, would you take each file individually.

10 Let us start with Government's Exhibit 1 in
11 evidence. First, would you identify the prime contract
12 number on that file?

13 A There is a purchase order L44306 issued pursuar
14 to Government contract N00019-72-A-007.

15 Q Who was that prime contract between?

16 A That is a contract between Grumman Aerospace
17 Corporation and the Department of the Navy. It is a basic,
18 ordering agreement for supplies and services ordered by the
19 Government, which includes technical manuals that are
20 necessary for various models of aircraft delivered by Grumman
21 to the Government.

22 Q Was that contract between Grumman and the Navy
23 made without formal advertising?

24 A Yes, it was.

25 Q Government's exhibit 1 represents a sub-contra

1
2 pursuant to that prime contract?

3 A Yes, it does.

4 Q Who were the parties to that sub-contract?

5 A Grumman Aerospace Corporation and Thiel
6 Technical Services Inc.

7 Q Would you just briefly describe to the jury
8 the subject matter of the purchase order or sub-contract?

9 A Well, this purchase order basically is a sub-
10 contract for a maintenance instruction manual. I can give
11 you the Navair description of it.

12 The basic order was \$11,846.

13 Q Was that purchase order required for the
14 performance of the prime contract which you had previously
15 described?

16 A Yes, it is.

17 Q Could you tell the Court and the jury who the
18 bidders were with respect to that sub-contract -- the bidders,
19 the amount of each bid and the date that their bid was
20 submitted?

21 (Continued on next page)
22
23
24
25

Dunn - direct

67

HS:GA

T2R3 PM 2

1
2 A The three bids for this subcontract were received
3 from Thiel Technical services. The amount was \$11,846. The
4 date of that bid itself -- Their letter is dated January 10,
5 1972.

6 The second bidder was Trylon Research Corporation.
7 Their bid was \$13,900. Their letter is dated the same, Janu-
8 ary 10, 1972.

9 The third bidder was Digionic Data Corporation,
10 and it was for \$14,600. Their bid letter is also dated Janu-
11 ary 10, 1972.

12 Q Who was the low bidder in that case?

13 A It was Thiel Technical Services, Inc., for \$11,846

14 Q Can you tell us the name of the person who signed
15 the letter submitting that bid?

16 A Mr. John Martin, President.

17 Q Would you turn to the next file, Government's
18 Exhibit 2.

19 First, could you identify for us the prime con-
20 tract number?

21 A The prime contract number is N00019-72-A-007.

22 That again is a basic ordering agreement that was
23 negotiated between Grumman Aerospace and the Department of the
24 Navy. It called for supplies and services, including technical
25 services.

1
2 Q Is it the same type as you previously described?

3 A Yes, it is.

4 Q Who was that subcontract between?

5 A This was a purchase order of subcontract issued
6 from Grumman Aerospace Corporation to Thiel Technical Services,
7 Inc.

8 Q Was that purchase order required for the perform-
9 ance of the prime contract?

10 A Yes.

11 Q Could you describe to the Court and Jury who the
12 three bidders were, the amount of their bids, and the date the
13 bid was submitted?

14 A Trylon Research Corporation, the bid was \$4,200,
15 the date of that bid was January 10, 1972.

16 Thiel Technical Services, Inc., \$3,164, the date
17 of that bid was also January 10, 1972.

18 Digionic Data Corporation, \$4,600, the date of
19 that bid was also January 10, 1972.

20 Q Who was the low bidder in that case?

21 A The low bidder was Thiel Technical Services,
22 \$3,169 even.

23 Q Who submitted the bid on behalf of Thiel?

24 A Mr. John Martin, President.

25 Q Would you turn to the next Government's Exhibit,

Government's Exhibit 3, the purchase order number 10-21501.

A Right.

Q Would you first identify the prime contract number in that case?

A The prime contract number is N00019-71-A-001.

Q Would you describe for the Court and Jury the nature of that prime contract?

A That contract is also an exclusive contract between Grumman Aerospace Corporation and the Department of the Navy. It is also a basic ordering agreement for supplies and services ordered for the Government, including technical publications of the various model aircraft delivered by Grumman to the Government.

Q Was that contract made without formal advertising?

A Yes, it was.

Q Who was the subcontractor in that case?

A Thiel Technical Services, Inc.

Q Was that subcontract purchase order required for the performance of the prime contract that you have described?

A Yes, sir.

Q Would you identify who the three bidders in that case were, the amount of their bids, and the date.

A In this case --

Dunn - direct

70

1

2

Q Perhaps I could withdraw that last question.

3

You described a "sole source" job?

4

A Yes.

5

Q Is that particular subcontract a "sole source"

6

job?

7

A Yes, it was procured on a single source basis.

8

In other words, this is a follow-on to one of

9

the other purchase orders that we covered before, 0-4306.

10

IG fls11

(continued on next page.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

IG:GA
T3R1 PM

DIRECT EXAMINATION

BY MR. DE PETRIS: (continuing)

Q That was Government Exhibit 1, for the record?

A Yes.

Q What was the amount of Thiel's bid?

A \$6,481 even.

Q And next, turning to purchase order 10-21502, Government Exhibit 4, was that a sole source job which related to the Exhibit you previously described, Government's Exhibit 2?

A Yes, it is.

Q Was that awarded to Thiel?

A Yes, sir.

Q That was pursuant to the same prime contract as you described for Government Exhibit 3; is that correct?

A That is correct. N00019-71-A-000-1.

Q What was Thiel's bid in that case?

A \$2,069.

Q Who submitted the bid on behalf of Thiel Technical Services, Inc.?

A Mr. Robert Rutkowski, Operations Manager.

Q Would you next turn to Government Exhibit 5 in evidence, and would you first identify the prime contract number in that case?

A The prime contract number is N00019-71-A-000-1.

1
2 Q That's one of the ones you previously described;
3 is that correct?

4 A I think so, but it is a basic order and agree-
5 ment, the same as the others.

6 Q Who was the subcontract in that case between?

7 A This is a subcontract issued from Grumman Aero-
8 space to Thiel Technical Services, Inc.

9 Q Was that purchase order required for the perform-
10 ance of Grumman's contract with the Navy?

11 A Yes.

12 Q Would you describe the three bidders in that case,
13 the amount of bids, and the date the bid was submitted?

14 A The bids -- The first bid was received from
15 Digionic Data Corporation. The bid received, \$35,919.32, but
16 the bid was revised because there is a deletion from one of the
17 items, to 26,046 and 35 cents.

18 Thiel Technical Services, Inc. bid initially,
19 \$33,969 even, with the same deletion for one item in here. It
20 was revised to \$24,487 even.

21 Technical Documentation, Inc., initially bid
22 \$37,251.53, with the same deletion of an item, with the revision
23 to \$26,689.26 -- the low bid going to Thiel.

24 Q Who was the individual who signed the letter sub-
25 mitting the bid on behalf of Thiel?

Dunn - direct

73

A Mr. Robert J. Rutkowski.

I don't think I answered part of your first question as to the date. The Thiel bid was dated March 23, 1973.

The Digionic, March 23, 1973, and also the letter from TDI.

Q Finally, with respect to that group of files, would you take Government Exhibit number 6 in evidence.

Would you first identify the prime contract number in that case?

A N00019-72-A-007.

This is one of the basic ordering agreements that we identified initially.

Q Who was the subcontract between in that case?

A The subcontract is a subcontract issued by Grumman Aerospace to the Thiel Technical Services, Inc.

Q Was that purchase order required for the performance of Grumman's Government contract with the Navy?

A Yes, it was.

Q Would you tell the Jury the three bidders in that case, the amounts of the bids, and the dates of their bid.

A Reliance Research Corporation. The dollar amount was \$16,138.59. The date of their bid, September 20, 1973.

Technical Publications Consultants. The amount of their bid was \$15,806.16. The date was September 20, 1973.

Dunn - direct

74

Thiel Technical Services, Inc., for \$15,019 even.
The date of their quotation was September 20, 1973.

Q Who was the lowest bidder in that case?

A The lowest bidder was Thiel Technical Services,
and that was negotiated to \$14,289 from their initial quotation
by the purchasing department.

Q Who was the individual who submitted the bid on
behalf of Thiel?

A Mr. Robert J. Rutkowski, Operations Manager.

Q Just three more files, Mr. Dunn.

Government Exhibit 7, in evidence, purchase order
number 90-75461. Can you identify the prime contract number
in that case?

A N00019-71-C-0450.

Q Who was that agreement between?

A Between Grumman Aerospace Corporation and the
Department of the Navy to supply eleven Model E2-C Aircraft,
and it covers the delivery of Technical Manuals.

Q Was that contract made without formal advertising?

A Yes.

Q Who was the subcontract between in that case?

A Thiel Technical Services, Inc.

Q And whom?

A And the Grumman Aerospace, issued by Grumman Aero-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

space Corporation.

Q Was that subcontract required for the performance of Grumman's Government contract with the Navy?

A Yes.

Q Tell us the three bidders, the amounts of their bids, and the dates.

A Thiel -- Excuse me -- Technical Documentation, Inc., \$13,640.14. The date of that bid was February 8, 1973.

Thiel Technical Services, Inc., \$12,217 even.
The date of that bid is February 4, 1973.

Eastern Technical Services, Inc., \$13,515 even.
The date of that bid is February 8, 1973.

Q Who was the lowest bidder in that case?

A Thiel Technical Services at \$12,217 even.

Q Who was the individual from Thiel who submitted the bid?

A Robert J. Rutkowski, Operations Manager.

Q Would you next take Government's Exhibit 8 in evidence, purchase order 90-75462, and identify the prime contract number in that case?

A The prime contract number in that case is N00019-73-A-0008.

That is an executed contract between Grumman and the Department of the Navy for supplies and services as ordered

Dunn - direct

76

by the Government, including technical manuals to support the aircraft here, which is an E-2A Aircraft Model Series.

Q Was that contract made without formal advertising?

A Yes.

Q Who was the subcontract between in that case?

A The subcontract was between Grumman Aerospace Corporation and Thiel Technical Services, Inc.

Q Was the purchase order in that case required for the performance of Grumman's contract with the Navy?

A Yes, it was.

Q Would you identify the bidders in that case, and the amounts of their bid, and the dates?

A Technical Documentation, Inc., \$4,319.69. The date of their bid was February 8, 1973.

Eastern Technical Services, Inc., \$4,797 even. The date of their bid was February 8, 1973.

Thiel Technical Services, Inc., \$3,995 even. The date of their bid is February 6, 1973.

Q Who was the lowest bidder with respect to that subcontract?

A Thiel Technical Services at \$3,995 even.

Q Who was the employee who signed the letter on behalf of Thiel?

A Mr. Robert J. Rutkowski, Operations Manager.

Dunn - direct

77

1
2 Q Finally, would you turn to Government Exhibit 9
3 in evidence.

4 Could you identify the prime contract number in
5 that case?

6 A N00019-71-C-0450.

7 Q Who was that contract between?

8 A This contract was a contract between Grumman Aero-
9 space Corporation and the Department of the Navy.

10 This was -- Let's see -- This is an executed
11 contract between Grumman Aerospace Corporation and the Depart-
12 ment of the Navy to supply eleven Model E-2 Aircraft, and also
13 covered the delivery of technical manuals, as ordered under the
14 contract.

15 Q Was that contract made without formal advertis-
16 ing?

17 A Yes, it was.

18 Q Who was the subcontract between with respect to
19 Government Exhibit 9?

20 A The subcontract was a subcontract issued by
21 Grumman Aerospace Corporation to the Thiel Technical Services,
22 Inc.

23 Q Was that purchase order required for the perform-
24 ance of Grumman's contract with the Navy?

25 A Yes.

1
2 Q Would you tell us the bidders, the amount of the
3 bids, and the date?

4 A Eastern Technical Services, \$21,139 even. The
5 date of that bid was July 10, 1973.

6 Digionic Data Corporation, \$22,014.43. The date
7 of that bid was July 10, 1973.

8 Thiel Technical Services, Inc., \$20,533 even.

9 Q Who was the employee who submitted the bid, who
10 signed the bid letter on behalf of Thiel?

11 A Mr. Robert J. Rutkowski, Operations Manager.

12 Q Mr. Dunn, I now hand you Government Exhibit 10
13 in evidence. Can you identify that Exhibit?

14 A Yes. This is a Schedule that I had prepared at
15 my direction, of payments made to various vendors.

16 Q Does that summarize records obtained at Grumman?

17 A Yes.

18 This summarizes payment records made by Grumman
19 Aerospace Corporation.

20 Q Payment to whom?

21 A Subcontractors.

22 Q Pursuant to various purchase orders?

23 A Pursuant to all their purchase orders that would
24 have been paid in the years on this Schedule.

25 Q Is Thiel one of the vendors listed on that Sched-
ule?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes, it is.

Q What years does the Schedule cover?

A The Schedule covers 1968 through and including 1973.

Q Starting with the year 1968, would you tell the Court and Jury the amount of money paid to Thiel in that year.

A None.

Q 1969 and 1970?

A The same is true for '69, and 1970 -- No payments made by Grumman Aerospace Corporation.

Q What about 1971?

A \$7,023.73.

Q That was the amount of money paid by Grumman to Thiel in 1971?

A That is correct.

Q What was the amount of money Grumman paid to Thiel in 1972?

A \$32,470.07.

Q What was the amount of money Grumman paid to Thiel in the year 1973?

A \$91,570.06.

MR. DE PETRIS: I have no further questions of this witness, your Honor.

MR. SUTTER: May I approach the bench?

Dunn - direct

80

THE COURT: Of course.

(Side bar discussion.)

MR. SUTTER: Judge, may I respectfully request a recess until 9:30 tomorrow morning?

THE COURT: Yes.

MR. SUTTER: We have gotten a lot done today through the cooperation of the United States Attorney.

THE COURT: We will proceed from 10:00 until 4:00 o'clock tomorrow.

MR. SUTTER: Thank you.

THE COURT: Are you going to contest the Government's contention that this is a prime contract?

MR. SUTTER: That is one thing I have to go over with my people. I am sure they are primes.

THE COURT: Well, if you are not going to stipulate as to it all, the elements in Section 51 of Title 41, which I take it is the kind of provision we are interested in, you will have to prove it so we had better make a determination quickly.

I'd like your Requests to Charge as early as possible.

MR. DE PETRIS: Mine are being typed now.

(Conclusion of side bar discussion)

(Following held in open court.)

1 THE COURT: Ladies and Gentlemen, thank you very
2 much. Be back here promptly at 10:00 o'clock tomorrow
3 morning.

4 Do not discuss the case with anyone. Keep an
5 open mind. Do not read newspapers or listen to TV or
6 radio news reports.

7 Enjoy your evening. We will proceed from 10:00
8 until 4:00 o'clock tomorrow.

9 Good night.

10 Ladies and Gentlemen, would you mind going through
11 the back way because we will be conducting other business
12 while you are not here, and I want you to get used to
13 coming in the back way, and my Law Clerk will show you
14 how to do that.

15 (Jury excused for the day at 4:00 o'clock P.M.)

16 THE COURT: You may step down, sir, and be here
17 tomorrow at 10:00 o'clock.

18 MR. SUTTER: Would your Honor hold the witness
19 for one moment, please?

20 THE COURT: Yes, of course.

21 MR. SUTTER: Judge, I noticed during the course
22 of the examination by Mr. DePetris that Mr. Dunn was
23 referring to some notes that he has in this particular
24 file with him, and I was wondering if your Honor would
25 direct Mr. Dunn to return with the notes, because I

1 intend to make application to look at them.

2 THE COURT: Did you use them to refresh your
3 recollection?

4 THE WITNESS: Yes, I did.

5 THE COURT: Mark it as a Government Exhibit for
6 identification, the notes used by the witness to refresh
7 his recollection, which would be Government Exhibit 30.

8 THE CLERK: Government Exhibit 30.

9 (So marked.)

10 THE COURT: Staple them together, and you can
11 look at them tonight before the witness goes, and he
12 will return with them tomorrow.

13
14 * * *
15
16
17
18
19
20
21
22
23
24
25

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----x
5 UNITED STATES OF AMERICA, :

6 -against- :

7 JOHN MARTIN, ROBERT RUTKOWSKI
8 and THEIL TECHNICAL SERVICES, INC., :

9 Defendants. :

74-CR-588

10 -----x
11
12 United States Courthouse
13 Brooklyn, New York

14 November 19, 1974
15 10:00 o'clock A.M.

16 B e f o r e :

17 HONORABLE JACK B. WEINSTEIN, U.S.D.J.
18
19
20
21
22
23

24 HENRY SHAPIRO
25 OFFICIAL COURT REPORTER

1
2 **Appearances:**
3

4 DAVID G. TRAGER, ESQ.
5 United States Attorney
6 for the Eastern District of New York

7 BY: RONALD DE PETRIS, ESQ.
8 Assistant U.S. Attorney

9 JOHN SUTTER, ESQ.
10 -and-
11 STEVE WILSON, ESQ.
12 Attorneys for Defendants
13
14
15
16
17
18
19
20
21
22
23
24
25

IG:jm
TlamRl

1 THE COURT: Bring in the jury.

2 Do you have a witness?

3 MR. DE PETRIS: Yes.

4 Your Honor, before the jury comes in --

5 THE COURT: They are on their way in.

6 MR. DE PETRIS: The Grand Jury minutes have
7 been -- of last Thursday -- have been transcribed and
8 we had them turned over to defense counsel and perhaps
9 we can have the Grand Jury minutes of Mr. Sheridan
10 marked 27B and Agent Kaye, 29B.

11 THE COURT: They will be marked.

12 (So marked.)

13 MR. SUTTER: I have received a copy, your Honor.

14 (Jury entered jury box at 10:15 a.m.)

15 MR. SUTTER: May we approach the bench for a
16 moment, your Honor?

17 THE COURT: Surely.

18 (Side-bar discussion.)

19 MR. SUTTER: Your Honor, I have a personal
20 problem and I have explained it to Mr. DePetrus.

21 I have a growth next to my right testicle and
22 it has become what the doctor refers to as "hot" and
23 I have to get to see him this afternoon and if we can
24 break at three o'clock --

25 THE COURT: Certainly.

1 MR. SUTTER: The doctor's name is Govannalle --

2 THE COURT: You need say nothing further.

3 If you have a problem we will be happy to
4 assist you. I am sorry to hear it is this.

5 MR. SUTTER: May we have a blackboard?

6 THE COURT: Yes.

7 (Conclusion of side-bar discussion.)

8 (Following held in open court:)

9 THE COURT: Good morning, ladies and gentlemen.

10 You may proceed.

11 H O W A R D D U N N , called as a witness, having been
12 previously duly sworn by the Clerk of the Court,
13 resumed the witness stand and testified further as
14 follows:

15 CROSS-EXAMINATION

16 BY MR. SUTTER:

17 Q Do you recall yesterday you had certain
18 notations you used to refresh your recollection?

19 A Yes, sir.

20 Q Did you return with them, sir?

21 A Yes.

22 Q I wonder if I might have them --

23 MR. SUTTER: May I approach the witness, your
24 Honor?

25 THE COURT: Yes, of course.

Dunn-cross

BY MR. SUTTER:

Q (continuing) Mr. Dunn, I'd like to go over, generally, this corporate structure that you described for us yesterday.

I take it that Grumman Corporation is a parent corporation; is that correct?

A Yes.

Q It is a wholly-owned subsidiary; is that correct?

A Yes.

Q Is that the former Grumman Engineering Corporation?

A Grumman Engineering became Grumman Aerospace.

Q Now, Grumman Aerospace specializes in aircraft and space programs?

A That is correct -- for the United States Government.

Q They didn't do the LEM program?

A Yes, they did.

Q That's all over now?

A We are wrapping it up now.

Q In Grumman they have several programs that are going on; correct?

A Correct.

Q Can you tell me, sir, how many there are or

Dunn-cross

were during the period 1972 on?

A Six or eight major programs.

Q One is the F-14; correct?

A Correct.

Q And, sir, whom do you work for again?

A John Carr, the administrative executive of Grumman and Jack Beerwith, and I report to the Audit Committee of Grumman.

Q Well, sir, what is really your job there?

A I am responsible for all the financial and ^{AUDITING} operational ~~ordering~~ of the Grumman Corporation and all its affiliates.

I report, administratively, to Mr. Carr, the administrative vice-president.

Organizationally, I am on the same level as vice-president, general counsel. I am the vice-president of finance.

Q You have a staff of auditors?

A Yes.

Q So in other words, you are the chief accountant?

A No. I am chief auditor. I audit the accountants.

Q You check out the accountants?

A That is part of my job, to check the reliability

Dunn-cross

and integrity of the accounting system as well.

Q Do you have anything to do with contracts?

A Part of my auditing responsibilities get me involved in the review of contracts.

Q The review of contracts after they are in effect; isn't that correct?

A That is correct.

I have held prior positions with Grumman whereby I was responsible to negotiate some contracts.

Q Well, may I ask you, sir, did you ever have anything to do with the negotiations of any contracts since 1971?

A Yes.

Q All right.

Now, did you have anything to do with the obtaining of the contracts that you referred to on your direct examination?

A No.

Q You never negotiated those or had anything to do with obtaining them?

A No.

Q Now, I am referring to N -- I think you used the phrase "triple zero" --

A Yes.

Dunn-cross

1
2 Q N, triple zero, 19-72-A-triple zero, 7 -- you
3 never negotiated that?

4 A No.

5 Q N, triple zero, 19-A-triple zero, 1 -- you
6 never negotiated that?

7 A The same -- I had nothing to do with it.

8 Q N, triple zero, 19-71-A-triple zero, 8?

9 A No.

10 Q I am just going to use the last few designa-
11 tions -- you never negotiated -C-450?

12 A Nor that contract.

13 Q So then, when you told us yesterday that these
14 contracts were not formally advertised that is based upon
15 what somebody told you; correct?

16 A That was based upon my knowledge of the way
17 Grumman Aerospace executes its contracts.

18 I did review those contract files, the
19 permanent official records of the company.

20 Q But you don't know whether or not, of your own
21 knowledge, they were in fact formally advertised?

22 A I know from the magnitude of the dollars
23 involved in the programs of those contracts that they were
24 not -- they were negotiated Government contracts and not ones
25 from competitive bids.

Dunn-cross

Q Would you bear with me. I'm not trying to be difficult.

Do you know of your own personal knowledge, do you know for a fact that those contracts were not formally advertised?

A Not from my own personal knowledge, no.

Q All right. Fine.

MR. SUTTER: Mr. DePetrus, may I have Government Five?

(Document handed to counsel.)

BY MR. SUTTER:

Q Now, do you know what this -- and as I say, I am not going through all the triple zeroes, just the end ones -- triple zero, 7 -- do you know what that contract concerned?

A It is a basic ordering agreement with the Government for supplies and services that Grumman Aerospace is to furnish the Government on various aircraft models.

Q Do you know what aircraft we are dealing with?

A The contract itself provides for basically almost all the models Grumman deals with.

Q Doesn't it relate to the S-27

A Not per se.

Supplies and services can be audited under many

Dunn-cross

existing models Grumman has.

There is a date in there, '71 or '72. That indicates the physical year of the contract and all sales, services and models can be ordered; F-14; E-2; A-2, etcetera.

Q Isn't it a fact that on the S-2G --

A That's an out of production Grumman aircraft.

Q Isn't it a fact that Grumman was a sub-contractor to Martin Marietta on that contract?

A No. The S-2 is a prime contract that Grumman built.

Q The S-2G?

A That doesn't ring a bell.

Q Would you say that was built by Martin Marietta and you were sub-contractors?

A I don't know that of my own knowledge.

Q So, you are not sure whether you were a prime contractor there or a sub-contractor?

A I am aware that the basic order and agreement is a prime contract and we received an order under it.

Q Do you know if you were a sub-contractor to Martin Marietta or not?

A No, sir.

MR. SUTTER: May I approach the witness, your Honor?

Dunn-cross

THE COURT: By all means. You don't have to ask leave.

BY MR. SUTTER:

Q I show you Government's Exhibits 1 and 2 in evidence which you testified concerning yesterday and I ask you to take a look at those purchase orders you gave us testimony on.

A Yes.

Q Now, do you see purchase order number 0-443067

A Yes.

Q What is that for, sir?

A Do you mean the description of the services to be supplied?

Q Right. In other words, what did they order?

A Various manuals and the numbers are filled out here.

Q Do you know what they relate to?

A The model as described is the S-2G.

Q So, there is such a plane; right?

A Yes.

Q And you don't know who builds it?

A I believe Martin builds it, but I'm not sure of my own personal knowledge.

Q That puts you as a sub-contractor?

Dunn-cross

1
2 A If we had a sub-contract with Martin; that is
3 correct.

4 Q You don't know whether or not you do have that
5 contract?

6 A No, I do not know.

7 Q Thank you, sir.

8 Now, I know that your particular function with
9 Grumman doesn't make you particularly an expert with regard
10 to the aircraft --

11 A That's right.

12 I am not technically-oriented. I am not an
13 engineer as such.

14 Q But you know generally, what planes and programs
15 Grumman had going at that time?

16 A Yes.

17 Q The S-2 was an out of production plane; is that
18 correct?

19 A That is correct.

20 Q So we can assist the jury here a little bit,
21 the S-2 is the original model; correct?

22 A Yes. There was an S-2-1 and then an S-2 --

23 Q As you modified the S-2 you would designate it
24 with A, B, etcetera and that is how we come to G?

25 A Right.

Dunn-cross

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q All the S-2s were out of productions; correct?

A Yes, for Grumman. We haven't built them for quite a few years.

Q The project manager there would be whom?

A The contract manager?

Q No, the project manager.

A I don't follow.

Q Who would be the manager for out of production aircraft?

A Olaf Andrasen.

(continued on next page)

isberg
mR2
llows

1
2 Q That's how they get the "A"? That's a naval
3 designation for "attack"?

4 A Yes, but it happens to be a fighter.
5 The designations are not all inclusive of the
6 aircraft.

7 Q But it is generally characteristic?

8 A Yes.

9 Q You had an FA-6; right?

10 A Yes.

11 Q The publications manager there was, whom?

12 A That was Frank Munafo.

13 Q The Mohawk OV-1?

14 A That was Mel Cohen but more recently it has
15 been handled by Bill Everett who handled that with some other
16 functions.

17 Q In and about 1971, 1972 and 1973, it was Mr.
18 Cohen, wasn't it?

19 A That is correct, sir.

20 Q Now, this publication unit -- by inexperience I
21 call it a unit -- they were all housed together in one building?

22 A No, that is not correct.

23 The F-14 --

24 Q Other than the F-14?

25 A That's basically so.

1
2 They were in Syosset 34 complex. We have a
3 number of plans in that area.

4 Q But in or about 1971, '72 and '73 they were in
5 Woodbury or Syosset?

6 A With the exception of the F-14.

7 Q The F-14 was in Bethpage?

8 A Yes, plans 1 and 15.

9 Q The publications man on the F-14 was Mr. Robert
10 Franke?

11 A Correct, sir.

12 Q They used a different bidding procedure, didn't
13 they, under the F-14?

14 A No.

15 Q Identical?

16 A Basically it was identical. I don't recall any
17 distinctive things on the F-14.

18 They were a starting program and they had con-
19 siderably more orders to place, initially, for different items.

20 Q Now, these notes that you furnished with Govern-
21 ment Exhibit 30 for identification, the ones you had yesterday-

22 A Yes sir, --

23 Q (Continuing) You wrote them out; correct?

24 A Yes, I did.

25 Q And I take it as an assistant in your testimony?

1
2 A To refresh my recollection, my own memory. Some
3 of it, is routine. I wrote some of it on the train as I was
4 coming in.

5 Q But some you had to dig for a little bit?

6 A The last page indicating the specific contracts
7 involved I wrote that as a result of reviewing the specific
8 contracts.

9 Q You had to go into files?

10 A Yes. I did that on Friday -- Monday morning,
11 before I came to Court in view of the fact that I was only
12 notified on Thursday evening that we had a trial on Monday.

13 Q Now, these procedures that you testified to con-
14 cerning how bids were taken by Grummond for publication, are
15 they written out in any kind of a procedure manual?

16 A Yes, they are. They are make or buy committee
17 procedures.

18 Q Let's get into the make or buy committee and
19 would you explain to us what that is?

20 A Yes.

21 Maybe I may ask your permission -- I have a
22 copy of those written procedures, fourteen pages which I brought
23 with me if you want to go into the details.

24 Q I'd be delighted to get it for you if it is out
25 here.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No, I have it with me.

O Oh, fine.

A This procedure that I'm referring to is dated May 7, 1973, but it is identical to, the procedure that was in effect in November, 1972.

O Let me ask you a couple of questions --

THE COURT: Excuse me.

The witness has a memorandum before him. Would you mark it 31 for identification, please.

THE CLERK: Government's Exhibit 31 for identification.

(So marked.)

Q When Grummond or any other supplier receives a major contract from the Government, the Government requires, does it not, that a certain percentage of that contract be contracted out to small business?

A There is a small business regulation. I don't recall that it calls for a percentage. It is Grummond's policy to encourage very actively pursuing small business firms.

I don't recall a percentage, per se in the regulation. I am not an expert on the legalities of it.

Q But you do know, at least in Grummond, you encouraged the use of small businesses and usually local businesses on the island?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A That is correct.

Q Your kind of the grandfather of the small business?

A Since we deal with thousands of buyers we encourage that.

Q That is essentially what the make or buy committee does -- whether you make something or buy from an outsider?

A It makes a determination as to whether we have the capability and capacity to do it in house and if it is done outside.

They type of item would determine whether it can be handled by a small business but the make or buy procedure per se, that I have given you, makes no reference to small businesses. That is something that the purchasing department pursues in their procurement regulations.

Q Make or buy essentially -- make -- "make" -- when you use that word, Grummond or a subsidiary corporation such as Aerospace is going to perform the services or manufacture the product themselves?

A Yes, and "buy" with regard to a subcontractor.

Q So, there's nothing unusual in any of the major contracts Grummond has, to have sub-contractors from the outside submit bids and receive work for Grummond; is that correct?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A That is correct, sir.

Q And while you are not familiar with a regulation you know there is a policy to encourage the use of small businesses?

A That existed from 1971 to date.

Q That is still in existence?

A Yes. I know it is still in existence today.

We render reports for the small business administration and we have received some awards from them.

Q Now, this bidding procedure, is that established in Government 31 that you just showed me?

A Would you repeat the question?

The bidding procedure for subs in publications, is that established in Government 31 for identification -- these sheets of paper you just showed me?

A That is the make or buy procedure used by the publications department.

I don't quite follow the question.

Q Does that establish the rule of three?

A No, it does not. It is three or more. I don't think -- I'd have to refresh my recollection by looking at it but it is the general practice that three or more be selected.

Q I'm trying to develop whether or not that general practice is prescribed by Grummond in any type of manual

1
2 or regulation?

3 A In our purchasing manuals and procedures main-
4 tained by the purchasing department there is a reference to
5 three or more sub-contractors being sought out in a competitive
6 situation.

7 Q Now, what standards are set for the selection
8 of the three persons to accept the bids from?

9 A They would have to be firms that were qualified
10 to handle the business in question.

11 As an example, you would not accept Joe's Machine
12 Shop to do a sophisticated job on the LEM projects.

13 It must be within the technical capacity and
14 financial resources of the company.

15 You cannot give a large contract to a small
16 firm where you are not sure they could complete the project
17 and they might default and you would have to complete it your-
18 self and then you would jeopardize your delivery schedule to
19 customers.

20 Q Now, in sub-contracting publications work, techni-
21 cal manuals, you prepared this -- excuse me -- government
22 Exhibit 10 in evidence: correct, sir?

23 A Right. I had one of my employees prepare that
24 at my direction.

25 Q It was done under your direction?

1

2

A Right.

3

4

5

6

7

A That is correct.

IS fls 8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Now, it indicates from the years 1968 to 1973 that Grummond sub-contracted out to at least twelve corporation or business enterprises, the maintenance and manufacture of technical manuals; right?

(Continued on next page.)

HS:MM
T2R1

1
2 Q Now, on this chart did you put everyone that has
3 done a technical manual?

4 A No, those are the major firms.

5 Those were firms that I was particularly inquir-
6 ing into as the result of an investigation I was doing.

7 Those are the major firms that Grummond does
8 business with. Some are not that large, but I put them on the
9 schedule because of an investigation that I was conducting.

10 Q Thiel is one of the smallest?

11 A As I recall the figure is 131,000 from 1971
12 through 1973. Thiel only started to do business with Grummond
13 in 1971.

14 Q They're the second smallest in gross amount of
15 payment?

16 A I know Reliance Research is very low.

17 Q That would be the smallest?

18 A Yes.

19 Q I'm not trying to test your memory as to these
20 figures.

21 A I haven't seen the schedule in four months.

22 Q We have Reliance 74,800 and some odd dollars --

23 A If you say so.

24 Q I will show it to you.

25 A That is all right.

1

2

Q They only started in 1972 with Grummond, right?

3

4

A Yes, that was a firm that was started by a former employee of one of the other companies, I believe Trilon.

5

Q Trilon.

6

7

The person who established Reliance is a former employee of Trilon?

8

A Yes, Mr. Joseph Mitchell.

9

Q Went into his own business?

10

A Correct.

11

Q And in two years got 74,800 some odd dollars?

12

A Yes.

13

14

Q Thiel started in 1971 and got 131,000 some odd dollars?

15

A Yes.

16

17

Q And we have Data Communications of over five and a half million dollars, right?

18

A Yes.

19

Q Burmar Technical over one million three?

20

21

22

23

24

25

A With Data Communications and Burmar Technical that also includes some payments made for presentation services. I did not have my people break it out, as opposed to technical manuals. Those are the total payments made by Grummond Aerospace. They're designated in the second column to the left, a record of all payments made. All the others

1
2 represent publication payments, with the exception of Burmar
3 and Data which do presentation work for Grummond.

4 Q How about United States Electronic Publication?

5 A That's also on the schedule.

6 Q Four million seven hundred thousand -- would
7 you agree with me, sir, that that of all of the twelve Thiel
8 is the second smallest in amount of payments.

9 A Yes, sir.

10 Q And the smallest is a firm that only did business
11 with Grummond for two years as shown on that chart?

12 A '72 and '73.

13 Q Is that correct?

14 A Correct.

15 Q Now, when publication decides that they are going
16 to take a bid after this major buy decision is made and they
17 decide they are going to buy, what standards are set forth as
18 to which of these three out of the twelve are going to be
19 selected to submit the bids.

20 A Well, there are also some data that I have seen
21 during my investigation that indicated the dollar amounts of
22 orders that could be handled by certain firms, based upon
23 their financial capabilities.

24 In other words, they could be asked to bid on
25 awards up to a certain figure. That figure I believe was based

1
2 upon their financial resources and their capabilities as the
3 publication and purchasing people had appraised them at a
4 point in time.

5 Q Now, would you agree with me that all of your
6 contractors, say over two million dollars, would have the
7 financial responsibility and capability to perform anything
8 you decided to buy?

9 A That's probably a general statement that I would
10 tend to agree with.

11 However, there are certain firms that have more
12 expertise in certain types of technical publications and others
13 having performed as we talked about yesterday on a particular
14 manual, they become -- they have more expertise in that particu-
15 lar system.

16 Q Isn't it a fact, as you know now, as you sit
17 here now, that what happened was your project managers would
18 pick out three people they knew they were getting a kickback
19 from?

20 A I do not like to make that generalization. There
21 are a lot of things that I know now as a result of my personal
22 investigation and knowledge as a matter of Court record and
23 so forth, --

24 Q That's what I am getting at, not what you figured
25 before, but as you know it now. That's what they were doing?

1
2 MR. DE PETRIS: Objection to the general nature
3 of the question, your Honor.

4 THE COURT: Overruled.

5 A Well, would you repeat the question again?

6 Q Yes.

7 As you sit here now, armed with the knowledge
8 that you have obtained subsequently to what you believed was
9 going on -- based on everything that you know now, isn't it
10 a fact that your project managers in publication would pick
11 out three firms to bid that they knew they were going to get
12 a kickback from?

13 A Not only the project managers, other parties
14 were involved. It appeared to me then, as it does now, that
15 there was a conspiracy by people within Grummond and outside of
16 Grummond to violate the law and business practices.

17 Q Something was rotten in Bethpage?

18 A That's correct and that's why I reported it to
19 the FBI.

20 Q As a matter of fact, you had people in purchas-
21 ing who were working with your publications project managers,
22 correct?

23 A It appeared to me there was a conspiracy of a
24 number of groups within Grummond and outside of Grummond and
25 within venders to conspire.

1
2 Q As you sit here now -- incidentally, in addition
3 to your purchasing, you had some people -- bear with me a
4 moment please, Mr. Dunn.

5 -- who lesser than the project manager in publi-
6 cation, that were involved like Mr. Sheridan?

7 A People from the publications control group.

8 Q And two at least from purchasing, right?

9 A Three from purchasing and two from pub control
10 and the remainder -- one technical writer and I believe the
11 rest were project managers at one time or another.

12 Q As a matter of fact, your publications manager
13 on the A-6, Mr. Strenk, pleaded guilty to accepting kickbacks.
14 is that correct?

15 A correct.

16 Q Your project manager on Outer Production in
17 publication, Mr. Andreassen pleaded guilty to accepting kick-
18 backs?

19 A Correct.

20 Q Your project manager on the D-2 in publications
21 Mr. Raquzzine, pleaded guilty in this Court, did he not?

22 A Correct.

23 Q Your project manager on the EA-6B, Frank Munafo--

24 A Correct.

25 Q -- pled guilty in this Court, did he not?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Correct.

Q Your project manager on the Mohawk for publication, Mr. Mel Cohen, pled guilty in this Court, did he not -- then project manager?

A Correct.

Q Mr. Sheridan, what was his position?

A He was in publications control.

Q Pub control as you call it?

A Yes.

Q Pled guilty in this Court?

A That's correct.

Q Mr. Tom Mastona, what was his position?

A Also in publications control.

Q Pled guilty in this Court?

A Correct.

Q Mr. Angelo Claros, what was his position?

A He replaced Mr. Strenk as the program manager on the A-6, but at the time he was made the program manager we were aware of his improprieties.

Q Didn't take him long to learn?

A He was involved, but we went along with the authorities by letting him assume the position, although we knew he was involved, so not to impede the investigation.

Q He pled guilty in this Court?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Correct.

Q Now, purchasing was set up, was it not, as a check or balance on the activities of pub control, right?

A Publications and pub control --

Q That was set up as a safeguard by Grummond, one outfit checking on another?

A It was one of any number of ten checks and balances in the system, as I alluded to --

Q That didn't work too well, did it?

A Purchasing did not uncover the situation that I did, no.

Q Well, they not only didn't uncover it, a couple of them pled guilty to crimes involving their activities?

A Three of them specifically did. Two were directly involved in handling the paperwork for the publications and one for some other problem.

Q Would that be Mr. Pasquale?

A Yes, Mr. Showelski, Mr. Benjamin Cloisies, I personally discharged all of them.

Q So other than the F-14 program, which was removed from Bethpage -- away from the Woodbury or Syosset --

A And the LEM program. Those were the two major ones that Grummond had.

Q Every other program manager in publications

1
2 pled guilty to accepting kickbacks, have they not?

3 A Correct.

4 Q Many of their subordinates also?

5 A I wouldn't say also.

6 Q Well --

7 A I can only think of two subordinates, Mr.
8 George Rycliff and Mr. Angelo Claros. He was a subordinate
9 to Mike Strenk.

10 Q How about Terry Fisher?

11 A He was in the production area, of a lesser nature.

12 Q So you had thirteen Grummond people involved in
13 accepting kickbacks on publications?

14 A Correct, and a number of vender personnel.

15 Q And it is a fact, is it not, that the venders --
16 the sub-contractors, the people who were producing the manuals
17 such as Thiel were told pointblank that they wouldn't get any
18 business unless they kickbacked?

19 MR. DE PETRIS: Objection, your Honor.

20 Q If you know?

21 THE COURT: Overruled.

22 A I can't speak for what the venders were told by
23 our people. I can tell you facts as we know them today.

24 Q You know them to be that in each one of the situa-
25 tions, there was a kickback?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A A kickback or a gratuity.

O Which was mentioned before?

A Right.

O Just so the record is perfectly clear, you had nothing to do with this phase of the business?

A No, I did not.

I had the responsibility to audit this, to see if I could uncover things as any officer tries to do. He is not an insurer against fraud. When I did determine that there had been some alleged improprieties, I immediately, after bringing it to the attention of senior management, within the same day contacted the FBI to advise them of this.

O What I am trying to get across, you had nothing to do with the illegalities that the Grummond employees were involved in other than to feret it out?

A I would think not, although I had charge over the publication department to see that no further activity of this nature continued.

O To clear up one thing, I believe you told us -- may I have five minutes, please?

THE COURT: By all means.

If you would like, you may proceed by sitting down rather than standing.

MR. SUTTER: That is okay.

1
2 If I could have five minutes?

3 THE COURT: Take a five minute recess, ladies
4 and gentlemen.

5 (Jury leaves courtroom.)

6 THE COURT: You may step down.

7 THE WITNESS: I am comfortable here, your Honor.

8 (Recess taken.)

9 (Continued on next page.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

fls

(Jury present.)

CROSS-EXAMINATION

BY MR. SUTTER: (CONTINUED)

Q You told us, Mr. Dunn, yesterday, the program manager in publications had the responsibility, among others, to see that the publications were delivered on time and were within the budget.

A Figures respective of the program. That was one of his overall basic responsibilities.

Q Yes, when the master or big contract is issued to Grummond, are provisions made for technical publications and manuals in the contract?

A You mean a basic prime contract for an aircraft? A dollar limitation is put in. They do not know the amount, but the provision is made in the prime contract as in two of the numbers that I gave you which were prime contracts.

Q Essentially, when that prime or master contract is issued, the Government is aware that they are going to need these manuals for servicing and things of that nature.

A Yes.

Q And a limitation is put as to the dollar amount of the publication that they are going to require?

A It is more of a funding limitation that is put

Dunn-cross

119

1
2 in there initially. They have no feel for the scope of the
3 dollar amount until they get the deliver of the hardware and
4 find out how much the publications should be on the program.

5 Q When you talk about delivery within the budget,
6 who establishes the budget?

7 A It is established basically by the contract
8 department, who has the responsibility to negotiate the pub-
9 lications, and our program management department -- they would
10 determine that this is say two million dollars or something
11 on a given program, and we have to complete certain manuals
12 in the scope of those dollars.

13 Q They would tell publication what the budget was,
14 right?

15 A Yes.

16 Q So that the total amount of the various success-
17 ful bids would never exceed the budget that was established
18 for the publication?

19 A Well, the budget that the publication people
20 might have, might be a figure that included numerous manuals
21 and wouldn't be necessarily broken out to that. They would
22 have to deliver publications on a particular contractual
23 document and they might have a total figure. This might re-
24 quire ten to twenty manuals. They would not have established
25 the budget per each manual. It would be a budgetary estimate

Dunn-cross

120

1
2 of what they think it ought to be and now they would make a
3 detailed proposal out for us.

4 Q They would never exceed that which you set as a
5 budget?

6 A They have exceeded it when it was an unreasonable
7 figure and couldn't be adhered to.

8 Q I am speaking of a reasonable figure.

9 A Right.

10 Q All the contracts that you charted out for us
11 in Government's Exhibit 10 in evidence, did you find any of
12 those to be an unreasonable amount?

13 A Unreasonable in what sense?

14 Q High-priced?

15 A No, in fact the publications that were sub-
16 contracted were prepared -- and I had seen various schedules
17 as I initially got into the investigation -- compared to
18 industry standards and compared very favorably.

19 The Navy had done this on numerous occasions
20 themselves. They are interested in the cost of our sub-contract
21 and they make comparative studies and so forth to see that we
22 are on target with the rest of the industry.

23 Q And the result of your own investigation and the
24 result of the investigation by the Department of the Navy
25 indicated that your sub-contracts, insofar as technical public

1
2 tions or manuals were concerned, were right within the industry
3 norm: isn't that correct?

4 A That is correct.

5 Q What I am trying to get at, Thiel, take their
6 contracts. They didn't gauge Grummond on price, did they?

7 A Not that I am aware of.

8 Q Thiel did a pretty competent job?

9 A They were rated as a competent vender to Grummond
10 This was a result of facility reviews and evaluations of the
11 effort as performed by each of the contractors.

12 Q And also by the Navy themselves who would review
13 the quality of the work, correct?

14 A Correct.

15 Grummond's work has been reviewed and found very
16 favorable to the Navy too.

17 Q Now, I note with interest -- as you told us
18 before -- that Thiel commenced a relationship with Grummond
19 Aerospace in 1972 --

20 A '71.

21 Q '71, I am sorry.

22 In 1968 they had no contracts?

23 A As I recall -- and this is a memory test -- I
24 reviewed literally two to three to four hundred purchase order
25 pages. I reviewed considerable pages of Thiel. As I recall

1
2 there was a letter from Mr. Martin of Thiel -- if my memory
3 serves me right. It was dated February 22, 1971, introducing
4 the new management of Thiel. As I recall he signed the letter
5 and a vice president Andrew Furness or something -- I am
6 picturing something that I saw eight months ago.

7 Q It is okay.

8 A I usually can remember these things pretty well.

9 Q Now, how long had you been with Grummond?

10 A I have been with Grummond since March 15, 1960.

11 Q Do you recall back in 1965 when Thiel filed a
12 complain about corrupt bidding practices in the publications
13 department?

14 A No, sir.

15 Q Have no recollection of that?

16 A I have no recollection and in fact I have re-
17 viewed all of the files of the company and I have not deter-
18 mined any complaint of that nature. It doesn't mean it did
19 not happen. I haven't been able to ascertain any complaint
20 of that nature.

21 Q It would not have been by Mr. Martin or Mr.
22 Rutkowski. They were not running Thiel then.

23 A Yes.

24 Q Do you recall anyone in publications being
25 fired in 1965?

1
2 A No.

3 Q Did your investigation reveal that Thiel was on
4 a black list until Martin and Rutkowski took over the firm.

5 A No.

6 I do recall there was a letter that came in:
7 "Come look at our facilities. We have technical services to
8 offer you," and as I recall schedules were rendered to Thiel
9 in 1971, so apparently somebody did review his letter.

10 Q So is it fair to state that you don't know whether
11 or not they were on the so-called "black list?"

12 A That's correct.

13 Let me put it in a more positive aim for you.

14 There is an acceptable -- if you want to call it
15 that -- there is a listing by purchasing of certain vendors
16 that have met certain qualifications.

17 Q Such as kicking back?

18 A That's not one of them.

19 There are 83 vendors on Grummond's list at this
20 point.

21 Q I am talking about publication, not your other
22 contractors.

23 A In the case of publications, a facility check
24 would be made and so forth for a vendor, and these firms do
25 change their management and so forth.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Mr. Dunn, what is an ITO?

A An invitation quote.

MR. SUTTER: May I have this marked for identification, your Honor?

THE COURT: Defendant's Exhibit A for identification.

Q I show you defendant's Exhibit A for identification and I ask you if you would please look through that and tell me what it is.

A This is an invitation to quote that was sent to -- on December 12, 1971 -- to Thiel Technical Services.

This describes the service publication to be supplied. There appears to be some data here that I assume was given out at the Bitters conference indicating the amount of pages of the work to be performed on.

I guess this looks like a scratch sheet that Thiel used of computations in the preparation of their ^{633.2} ~~DN 36.2~~ form.

Q Other than those computations that you see there and the notes that were made, as you say in the Bitters conference, do you recognize those to be forms that are normally used by Grummond Aerospace?

A Yes, I do.

They're included in the procedure that I gave to

1
2 you before.

3 Q Yes.

4 Can you tell me to what purchase order that
5 particular exhibit relates?

6 A I can't without comparing. There is a cross-
7 index between this -- the data on here. I don't have it with
8 me. This purchase requisition is cross-indexed to a purchase
9 order. It is on the purchase order itself.

10 Q I left those two exhibits. It is one of those.

11 Q Can you relate it to one of those, one and
12 two in evidence? It relates to purchase order O-44307. They
13 both have the comparable purchase requisition numbers B040500.

14 Q Fine.

15 Now, Looking --

16 A Excuse me a second. It goes to a second order
17 too, which is this purchase order O44306. That is purchase
18 requisition number B040499.

19 Let me just check the rest of the papers. I
20 didn't realize you would ask me to conduct an audit.

21 Yes.

22 Q Now, would you look through defendant's Exhibit
23 A and if I may, I think I can shorten this for you, specifical
24 this page which I have opened it up to.

25 A It says, "Technical data incorporating the effe

1
2 of the G2 source data package supplied by Martin-Marietta
3 Aircraft illustrative parts breakdown."

4 Q Does that refresh your recollection as to
5 whether or not Grummond was a sub to Martin-Marietta on that
6 particular project?

7 A No, it does not.

8 Q Fine.

9 As I indicated before, the work under these
10 orders were authorized under a Government contract signed by
11 the Department of the Navy to the Grummond Aerospace Corpora-
12 tion.

13 That's a direct contract with Grummond Aerospace
14 and the Department of the Navy.

15 MR. DE PETRIS: Has that exhibit been offered
16 into evidence?

17 MR. SUTTER: No.

18 MR. DE PETRIS: Then I would move to strike the
19 reference to the contents of the exhibit that was read,
20 unless Mr. Sutter is going to offer it into evidence.

21 MR. SUTTER: All I did was ask Mr. Dunn whether
22 it refreshed his recollection as to whether or not --

23 MR. DE PETRIS: You asked Mr. Dunn to read a
24 portion of it.

25 MR. SUTTER: I did not.

1
2 THE COURT: The objection is overruled. You
3 may offer it yourself at a subsequent point.

4 MR. DE PETRIS: May I see it then, your Honor?

5 THE COURT: Not right now.

6 BY MR. SUTTER:

7 Q Do you know Mr. J. Sommers?

8 A John Sommers, I believe.

9 Q Right.

10 You testified about the amount of the contract
11 purchase order 90-76810--

12 A You will have to show it to me.

13 Q I know what you need.

14 A 09-76810.

15 Q Yes.

16 A That's the purchase order that started with
17 24,000 and went up to 48 and was reduced subsequently to \$25,000

18 Q 25,596.78?

19 A Yes.

20 Q Mr. Sommers didn't get involved in this mess, did
21 he?

22 A Mr. Sommers, as I recall, got involved at the end
23 of it. That order is a purchase order that goes back to March
24 of 1973, which in September and October of 1974 Grummond elected
25 to terminate a lot of the effort with a mutual agreement with

1
2 Thiel to do the work in house and Mr. Sommers as I recall, his
3 name is on some of the memorandum in the file.

4 Q Thiel reduced the amount by negotiation?

5 A Yes, it was the result of negotiations. The
6 amount of the uncompleted effort was reduced.

7 THE COURT: Excuse me, I must break now. I
8 have an appearance in the Immigration part.

9 Would you excuse me, ladies and gentlemen.

10 You can relax in the Juryroom. It will be about
11 ten minutes at least, so if you want to take a stretch
12 you may do so.

13 (Recess taken.)

14 (Continued on next page.)

15
16
17
18
19
20
21
22
23
24
25
:fls

(Jury entered Jurybox at 11:55 a.m.)

HOWARD DUNN, having been previously duly sworn by the Clerk of the Court resumed the witness stand and further testified as follows:

MR. SUTTER: I have no further question

THE COURT: Any redirect?

MR. DE PETRIS: A few questions, your Honor.

THE COURT: Have your next witness ready to come in.

MR. DE PETRIS: Yes.

Shall I make the call to my office?

THE COURT: No, you have an associate who can do it.

REDIRECT EXAMINATION

BY MR. DE PETRIS:

Q Mr. Dunn, do you recall that on cross-examination Mr. Sutter asked you some questions concerning your review of the contract files and the question of whether or not it was formally advertised?

A Yes, I do.

Q You indicated, I believe, that from the magnitude of the contracts you could tell if they were not formally advertised; is that correct?

A Yes.

1

2

Q What do you mean by "the magnitude"?

3

4

A Particularly two of the contracts -- one of them was a contract for 78A6A aircraft and I believe the total price, I recall from the face of the contract, was \$158,000,000

6

7

8

The other contract that related to the E-2 program was a contract for 11 E-2 aircraft and I believe that that was about \$136,000,000.

9

10

11

These are not advertised contracts from my knowledge of doing business with Grummond for fifteen or fourteen years.

12

13

14

15

Q From your knowledge of the procedures at Grummond and you reviewed the files, I believe you testified, that these kind of prime contracts were all not formally advertised; is that correct?

16

17

18

19

20

21

22

A It is my belief. I could not definitively say because I did not read the negotiation papers or so forth but it is not our practice to have these types of contracts with the Department of the Navy -- but I could not definitively say that I participated in the negotiations and talked with the director of contracts or talked with someone who could have confirmed that they were not advertised.

23

24

25

Q Do you recall that Mr. Sutter on cross-examination asked you certain questions about Government Exhibits 1 and 2 -- he showed you defendant's Exhibit A for identification --

1
2 certain questions about Martin-Marietta and the S2G?

3 A Yes.

4 Q Would you examine the letter from Thiel sub-
5 mitting its bid in Government Exhibits 1 and 2 in evidence.

6 A For purchase order 044306 -- this is what I
7 testified to yesterday -- there's a letter of January 10,
8 1972 from Thiel.

9 Q Just read the part of that again about S2 and
10 S2G.

11 A "Thiel Technical Services, Inc. pricing to re-
12 pair change pages to the affected twenty (20) S2 Technical
13 Manuals to incorporate the effort of the S-2G source data
14 package prepared by Martin-Marietta as follows."

15 Q Would it be a fair statement to say that that
16 purchase order called for the production of changes in the
17 technical manuals with relation to the S-2 program?

18 A Yes, that is correct.

19 Q And with respect to the S-2 program Grummond was
20 a prime contractor to the Navy?

21 A Yes, but not on the S-2G. I never heard that
22 before today.

23 Q And with respect to the S-2G, Martin-Marietta
24 obviously supplied some technical data?

1
2 Q But the purchase order between Thiel and Grummond
3 was with respect to a prime contract between, whom?

4 A The Department of Navy and Grummond Aerospace
5 Corporation.

6 Q Do you recall on cross-examination Mr. Sutter
7 asked you certain questions that various Grummond employees
8 who had pled guilty asked you whether or not various Grummond
9 Employees, to your knowledge, had pled guilty --

10 A That is correct, --

11 Q (Continuing) -- to receiving kickbacks?

12 A Kickbacks and conspiracy. I don't know his
13 exact words but that is what they had pled guilty to.

14 Q I believe he covered thirteen Grummond employees
15 in that category; correct?

16 A That is correct.

17 THE COURT: Excuse me.

18 Come to the sidebar.

19 (Sidebar discussion.)

20 THE COURT: What is the question you are now
21 going to ask?

22 MR. DE PETRIS: As to his knowledge of various
23 employees of sub-contractors who also pled guilty.

24 THE COURT: Are you going to object?

25 MR. SUTTER: Yes.

1
2 THE COURT: Sustained.

3 Don't ask it.

4 MR. DE PETRIS: Mr. Sutter --

5 THE COURT: Did you object to the questions he
6 asked?

7 MR. DE PETRIS: A couple of the questions.

8 THE COURT: Did you object when he asked --

9 MR. DE PETRIS: Yes, to a couple and your Honor
10 overruled my objections.

11 THE COURT: I don't remember your objecting to
12 the line.

13 MR. DE PETRIS: If Mr. Sutter opened the door
14 to that --

15 THE COURT: If I allowed those questions I would
16 have to declare a mistrial or if there was a conviction
17 there would be a reversal.

18 We are not trying the other sub-contractors but
19 this one.

20 MR. DE PETRIS: Then I would ask your Honor to
21 not permit Mr. Sutter to tell the Jury information that
22 all of the employees in Grummond were doing it and
23 that they did it because of pressure and because it
24 was a way of life.

25 He can't have it both ways.

1
2 THE COURT: You can't just sit back and allow
3 doors to be opened. I won't permit the case to be
4 tried that way.

5 MR. DE PETRIS: I would move to strike the testi-
6 mony then, your Honor.

7 THE COURT: It is too late.

8 MR. DE PETRIS: Mr. Sutter cannot have it
9 both ways.

10 THE COURT: It is too late and in any event he
11 opened it up by implication.

12 It is clear they were taking from many but I
13 won't allow you to go into this because if I allow you
14 to put in testimony that they pled guilty I am allowing
15 in hearsay of their admissions and I won't do it.

16 MR. DE PETRIS: Your Honor allowed hearsay -- I
17 objected to the specific questions Mr. Sutter asked
18 about whether or not the employees had coerced --

19 THE COURT: Lower your voice.

20 MR. DE PETRIS (Continuing): Coerced the sub-
21 contractor.

22 I objected and your Honor overruled the objec-
23 tion.

24 THE COURT: We had the whole line in by that time

25 MR. DE PETRIS: Not to that extent.

1
2 THE COURT: Proceed.

3 MR. DE PETRIS: I would ask your Honor to pro-
4 hibit Mr. Sutter from arguing that in summation.

5 THE COURT: Not at this point. Your case hasn't
6 been developed yet.

7 MR. DE PETRIS: I know of no rule of law that
8 says that when a defendant opens the door to an area
9 that the Government to proceed in that area has to stand
10 up and object.

11 There is just no rule of law. That's not a
12 rule of evidence.

13 Defense counsel decides what it wants to put in
14 and the Government makes a decision that it doesn't
15 want to appear to be hiding anything from the Jury.

16 M r. Sutter didn't ask for a sidebar before
17 the questions were asked. Mr. Sutter knows it would be sus-
18 tained if there was objection and the Government is
19 forced to object in front of the Jury.

20 THE COURT: You can ask for a sidebar or ask to
21 have the Jury excused.

22 MR. DE PETRIS: The Government doesn't want to
23 appear to be hiding anything.

24 THE COURT: Lower your voice. Lower your voice.

25 MR. DE PETRIS: The defendant has opened the door

1
2 The defendant can't have it both ways. A line
3 of questioning involving that -- if the defendant
4 wants to open the door then it should be approached
5 at a sidebar.

6 Once the question is asked the damage is done.
7 I can ask for a sidebar but the Jury knows the situation
8 and then if your Honor sustains the objection it appears
9 the Government is hiding something. The Government
10 is prepared to proceed that way if that is how defense
11 counsel wishes to proceed.

12 MR. SUTTER: I didn't preclude you from object-
13 ing.

14 MR. DE PETRIS: Once the door is open the Govern-
15 ment should have a right to proceed.

16 THE COURT: Denied.

17 The inferences are entirely different. The
18 use is quite different here.

19 I'm not going to allow the admissions of third
20 parties which are highly prejudicial and clearly hearsay
21 to be introduced in this way over the objection of the
22 defendant.

23 When you have objection to a question raised by
24 the defendant, make your objection.

1
2 they were overruled.

3 THE COURT: After the line was clearly embarked
4 on without objection.

5 Don't just sit by and expect to open your doors
6 in a case. I don't try my cases that way and I don't
7 like traps laid for defendants.

8 Proceed.

9 MR. DE PETRIS: I had no idea Mr. Sutter would
10 ask those questions.

11 THE COURT: You must have. Everybody else in
12 the courtroom saw what he was doing. You must have
13 seen it too.

14 MR. DE PETRIS: What is the basis of your Honor's
15 denying my motion to strike the testimony.

16 THE COURT: What testimony?

17 MR. DE PETRIS: I move to strike the testimony--

18 THE COURT: Your objection comes too late for
19 one thing and for another thing it is relevant on the
20 issue of the defendant's basic position that he was
21 coerced into doing this.

22 MR. DE PETRIS: Pleas of guilty are irrelevant
23 on that issue --

24 THE COURT: That the whole practice was coercive.
25 I take it that's his defense.

1
2 MR. SUTTER: That is correct.

3 ME. DE PETRIS: If the pleas of guilty are rele-
4 vant on the one hand and the pleas by the sub-contractors
5 are valid.

6 THE COURT: Your inference value is that other
7 sub-contractors pled guilty and therefore this sub-
8 contractor is guilty. It is so highly prejudicial
9 and if you reflect upon it you will see that a convic-
10 tion couldn't stand on those grounds, couldn't possibly
11 stand.

12 Just think about what you are trying to do. I
13 wouldn't permit it myself. It can't possibly stand.

14 MR. DE PETRIS: Then there is no reason not to
15 grant the motion to strike.

16 THE COURT: I just explained to you that the
17 inference value is different from his point of view
18 than from the Government's point of view.

19 MR. DE PETRIS: There's one more question. The
20 next question I was going to ask would be, "Mr. Dunn,
21 if an employee of a sub-contractor had come to you and
22 told you about a conversation what would have been your
23 response?"

24 THE COURT: Do you object to it?

25 MR. SUTTER: I object.

1
2 THE COURT: Sustained.

3 It is a hypothetical question and I won't permit
4 it.

5 MR. DE PETRIS: The basis of sustaining that
6 objection is that it is hypothetical.

7 "Mr. Dunn, did there come a time when a sub-
8 contractor came to you and advised you of the situation?

9 "Yes.

10 "What was your response?

11 "I reported it to the FBI."

12 THE COURT: He told us that.

13 MR. DE PETRIS: He didn't tell us how it came
14 about.

15 THE COURT: It has no significance. What differ-
16 ence does it make? These are events after the fact.

17 MR. DE PETRIS: It is relevant on the defense
18 of coercion.

19 If their defense is coercion they have a choice
20 to report it to the Government or report it to someone
21 in Grummond.

22 THE COURT: Objection sustained.

23 As a matter of fact, I allowed him to slip those
24 few remarks in and had the defendant objected I would
25 have stricken that and you had better instruct your

Dunn-redirect

140

witnesses not to slide in information. This witness has done that on a number of occasions.

MR. DE PETRIS: I have so instructed my witnesses
(Conclusion of sidebar discussion.)

(Following held in open Court.)

MR. DE PETRIS: I think I have no further questions, your Honor but I want to confer with Mr. Sutter for a moment.

THE COURT: By all means. Take your time.

(Pause.)

REDIRECT EXAMINATION

BY MR. DE PETRIS (CONTINUING):

Q Mr. Dunn, you testified a few minutes ago that with respect to whether or not the contracts were formally advertised; is that correct?

A That is correct.

Q You testified as to your belief?

A Yes.

Q If you were to go back to Grummond Aerospace Corporation would there be certain records or procedures from which you could determine with finality whether or not these were prime contracts, you believe so -- were or were not?

and ask that the witness be recalled after that time,
your Honor.

THE COURT: Yes, of course.

Next witness, please.

MR. DE PETRIS: The Government calls Olaf A.
Andreassen.

O L A V A. A N D R E A S S E N, having first been duly
sworn by the Clerk of the Court, took the witness stand
and testified as follows:

THE CLERK: State your name.

THE WITNESS: Olaf A. Andreassen.

THE CLERK: Spell it, please.

THE WITNESS: Andreassen A-n-d-r-e-a-s-s-e-n,
Olav, O-l-a-v.

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q Would you please state your name, sir?

A My name is Olav Andreassen.

Q Mr. Andreassen, how old are you?

A Fifty-five.

Q Where do you live?

A New Hyde Park, New York.

Q What is your education?

A Two years of college.

1:tr
1/1

1

THE COURT: Goodmorning, have the witness take the stand.

MR. DE PETRIS: Before we bring the jury in, I have two short matters.

THE COURT: I do not want any short matters. Bring the jury in.

If you have any applications in the future, just send word in. Do not wait until 10:30. These people are entitled to start their work promptly.

MR. DE PETRIS: I did as soon as everyone was present.

(Jury present.)

THE COURT: I will see you at the side bar, gentlemen, while we are waiting for juror no. 4.

(The following took place at side bar.)

MR. DE PETRIS: First, your Honor, I have here requests to charge. It is not completed. There is one additional request that is being typed.

THE COURT: Mark this as Court Exhibit 1.

THE CLERK: Court's Exhibit 1.

MR. DE PETRIS: I will insert the other request as soon as it is typed. I have given a copy to Mr. Sutter.

Secondly, on the question of formal advertising that Mr. Dunn was going to check on, he has checked

1 on it and I think we can reach a stipulation.

2 MR. SUTTER: I just need some time.

3 THE COURT: Very well.

4 MR. DE PETRIS: Finally, there are certain --
5 I had a chance to glance over the transcript this
6 morning and there are certain errors in the trans-
7 cript, typographical and otherwise, which I have
8 conferred with Mr. Sutter on and we have agreed on
9 them.

10 THE COURT: Just tell the reporter and they
11 will check it.

12 MR. DE PETRIS: Fine.

13 THE COURT: How are you feeling?

14 MR. SUTTER: Not too swift.

15 THE COURT: If you want to sit --

16 MR. SUTTER: I spoke to the doctor and he
17 said it would appear to be a rather large infection
18 that is going into the blood vessels.

19 THE COURT: If you need any rest at anytime
20 just let me know.

21 MR. SUTTER: He did not want me to continue,
22 but I told him I thought I could.

23 THE COURT: I would be perfectly happy to
24 have you sit while examining.

25 MR. SUTTER: It does not seem to bother. It

Sheridan-direct

375

JUROR NO. 11: Something to do with the
\$500 check.

JUROR NO. 7: That is it.

THE COURT: We will wait a moment so you can
look at it.

(Jury given document.)

(The following transpired at the side bar.)

MR. SUTTER: We have obviated recalling Mr.
Dunn.

MR. DE PETRIS: There was one item left open
in Mr. Dunn's testimony, the question as to whether
or not the 5 prime contracts were formally adver-
tised or not.

We are prepared to stipulate on the face of
each of the 5 contracts, the prime numbers which
were given during the course of his testimony,
there appears under item 13 the following statement:

"This procurement was" and a box, "advertised,"
and a box "negotiated pursuant to", then a box,
"10 United States Code Section 2304(a)", a box
"41 United States Code Section 252(c)."

As to each of the 5 contracts, the box
"negotiated" was checked. The box "advertised"
being blank, and on each one of the 5 contracts, the

Sheridan-direct

376

box "10 United States Code Section 2304(a)" is
checked with the addition on three of them subdivision
(a) 10.

Those three are: N0009-73-A-0008.

N00019-72-A-0007.

N00019-71-A-0001.

The boxes were checked 10 United States Code
section 2304(a)10.

Now, as to the others: N00019-68-C-0106 and
N00019-71-C-0450.

The boxes checked were 10 United States Code
Section 2304(a) with the addition of 1414. That is
subdivision 14.

I would ask your Honor to take judicial
notice of 10 United States Code Section 2303 and
2304(a), including subdivisions 10 and 14.

Those provisions cover contracts with
respect to the Department of the Navy and indicate
that such contracts shall be made by formal
advertising, however, the head of an agency may
negotiate such a purchase or contract if -- and
subdivisions 10 and 14 provide reasons.

Subdivision 14 has since been amended, but
both provide a reason for negotiating the contract.

1
2 THE COURT: All right, if there is no
3 objection I will take judicial notice of this and
4 you may read it to the jury.

5 Is there still a dispute as to whether they
6 are prime contracts?

7 MR. SUTTER: No, but there is the dispute
8 as to whether or not they fit within the statute.
9 It is just a question of law.

10 THE COURT: What is the dispute?

11 MR. SUTTER: This statute, if your Honor
12 pleases, is an exception type of statute.

13 2303, which is part of the procurement
14 statute of the United States, sets forth --

15 THE COURT: Excuse me, a moment.

16 MR. SUTTER: -- what departments may avail
17 themselves of 2303 et seq, 2304.

18 An analysis of the section indicates the
19 general rule is they must advertise -- so called
20 normal advertising as we find it in title 41.

21 However, the head of an agency may negotiate
22 such a purchase of a contract if he makes various
23 determinations or various situations arise.

24 In the absence of proof that the conditions
25 precedent to the exception are present, then I submit

Sheridan-direct

378

that the statute has not been shown to be complied with.

THE COURT: Are you going to have somebody testify that the conditions were met?

MR. DE PETRIS: I didn't realize that was going to be the issue, your Honor. The proof shows that each of these prime contracts were negotiated. That is all the statute requires.

THE COURT: You interpret it any way you want to.

You may want to have someone from the Navy come down and tell us what was done or from Grumman to fill in the possible gap.

(The following transpired in open court:)

THE COURT: Have you all finished?

You may go to lunch now. Be back at 20 minutes to two.

Do not discuss the case.

Has anyone read anything?

Enjoy your lunch.

(Jury leaves courtroom.)

THE COURT: I am not certain that I understand the contentions fully. I take it the Government does, because it worked with the statute.

Sheridan-direct

379

Now that you are on notice, you may want to consider whether you want to put something in on it.

MR. DE PETRIS: I think my understanding, possibly in the wildest dreams of the defendant that maybe those contracts were negotiated when they shouldn't have been.

THE COURT: That is right.

MR. DE PETRIS: There is no evidence that that is the case.

THE COURT: You have the burden of proof.

MR. DE PETRIS: The Government has satisfied its burden that the contracts were negotiated. If the defendant wants to come forward with other evidence --

THE COURT: You have been told that they will be intending that if they were negotiated, that possibly that shouldn't have been.

MR. DE PETRIS: I submit they cannot make such an argument without evidence.

THE COURT: I will let them make the argument, because I do not understand that you have established that they should have been negotiated.

You do whatever you wish. I will let you go

Sheridan-direct

380

1
2 to the jury on this, but that does not mean they
3 cannot argue that you have not met the burden. Better
4 give me a request to charge on it.

5 MR. SUTTER: We just worked it out.

6 THE COURT: All right.

7 I still have not gotten your supplemental
8 request.

9 MR. DE PETRIS: I have it right now.

10 There is one other matter that I would like
11 to bring to your attention and that was -- it is a
12 separate case but it involved the timing of this
13 case.

14 Your Honor recalls the Cronin matter that
15 was initially brought on before you, a motion to
16 dismiss the indictment against one of the
17 defendants in the interests of justice, in the
18 FHA trial, and your Honor referred it back to Judge
19 Travia.

20 Judge Travia is hearing that motion tomorrow
21 morning. It is on for 10 o'clock.

22 Mr. Accetta is down in Washington. That leaves
23 only me familiar with it. I would have to appear to
24 argue that.

25 THE COURT: All right, he has to get his

1 Kay - direct

2 100.

3 MR. DE PETRIS: It is also stipulated that
4 Government's exhibit 19A in evidence is the checkstub
5 from the records of Thiel Technical Services, Inc.

6 MR. SUTTER: That is correct, your Honor.

7 MR. DE PETRIS: I would ask that these exhibits
8 be passed to the jury.

9 I would also ask the Court to take judicial
10 notice that December 7th, 1973, was a Friday.

11 THE COURT: I so note it if that's what the
12 calendar says.

13 MR. DE PETRIS: That's what the calendar says.

14 Your Honor, I have no further questions of
15 this witness. The only other item that the Government
16 has in its direct case is a stipulation concerning
17 one remaining item with Mr. Dunn's testimony.

18 THE COURT: Well, why don't you read the
19 stipulation to the jury now.

20 MR. DE PETRIS: Fine. That was with respect
21 to the question of whether the 5 prime contracts
22 were negotiated or made with formal advertising or
23 not.

24 It is stipulated between the Government and
25 defense counsel that on the face of each of the 5

1 Kay -- direct

2 contracts between Grumman and the Navy, that Mr.
3 Dunn referred to in his testimony -- and I won't read
4 all of the number designations, N00019, etcetera,
5 but it was the 5 that he referred to, the contracts
6 between Grumman and the Navy.

7 Under item 13 on the face of each of those
8 5 contracts there appears an item reading as follows:
9

10 This procurement was -- then there is a box
11 which is blank -- advertised -- another box which
12 has a checkmark in it -- negotiated, comma, -- and
13 it reads:

14 Pursuant to: -- and then there are two more
15 boxes. Alongside one of them is 10 U.S.C. Section
16 2304(a).

17 And alongside the other one is 41 U.S.C.
18 Section 252(c).

19 On all five of the contracts the box
20 negotiated is checked.

21 On three of the contracts -- I will have to
22 read off the numbers now for the record.

23 On three of them the box is checked, 10 U.S.
24 Code Section 2304(a)(10), those three contracts are:

25 N00019-73-A-0008. N00019-72-A-0007.
N00019-71-A-0001.

1 Kay - direct

2 On the other two:

3 N00019-68-C-0106. N00019-71-C-0450.

4 The boxes checked 10 U.S. Code Section 2304(a)
5 (14).

6 I would ask the Court to take judicial
7 notice of Section 2303 of Title 10 of United States
8 Code and section 2304 of Title 10 of the United
9 States Code.

10 THE COURT: Read it to the jury so that they
11 understand what you are talking about.

12 MP. DE PETRIS: I will.

13 Reading from section 2303(a):

14 Applicability of chapter.

15 (a) This chapter applies to the purchase,
16 and contract to purchase, by any of the following
17 agencies, for its use or otherwise, of all property
18 named in sub-section (b) and all services for
19 which payment is to be made from appropriated funds:

20 And it lists several agencies, one of them
21 being the Department of the Navy.

22 Sub-section B:

23 This chapter does not cover land. It covers
24 all other property including --

25 And then it lists various items of which

1 Kay - direct

2 contained in there are aircraft, sub-section 6,
3 parts, accessories and equipment.

4 Section 2304 reads as follows:

5 Purchases and contracts:

6 Formal advertising; exceptions.

7 Subdivision A:

8 Purchases of and contract for property or
9 services covered by this chapter shall be made by
10 formal advertising. However, the head of an
11 agency may negotiate such a purchase or contract,
12 if --

13 And then there are listed 17 subdivisions
14 that -- the ones applicable here are subdivision 10
15 for three of the contracts, and subdivision 14 for
16 the other two. So I will read those two sub-sections

17 However, the head of an agency may negotiate
18 such a purchase or contract, if, subdivision 10,
19 the purchase or contract is for property or services
20 for which it is impractical to obtain competition.

21 And then with respect to (a) (14):

22 However, the head of an agency may negotiate
23 such a purchase or contract, if, subdivision 14,
24 the purchase or contract is for technical or for
25 special property that he determines to require a

12 1 Kay - direct

2 substantial initial investment or an extended period
3 of preparation for manufacture, and for which he
4 determines that formal advertising and competitive
5 bidding might require duplication of investment or
6 preparation or ready-made, or would unduly delay the
7 procurement of that property.

8 I have no further questions, your Honor.

9 (continued on next page.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

7 1 THE COURT: Well, if that's what you need, that's
2 what we will do.

3 All right. Tomorrow we will finish at 3:00
4 o'clock.

5 JUROR NO. 11: Thank you very much.

6 THE COURT: You're welcome.

7 JUROR NO. 11: Good night.

8 (Whereupon, Juror No. 11 retired from the court-
9 room.)

10 MR. DE PETRIS: Your Honor --

11 THE COURT: I think you better reconsider whether
12 you need anybody who is the head of the agency under
13 2304.

14 MR. DE PETRIS: That's what I was going to ad-
15 dress myself to at this time.

16 THE COURT: No, I don't want to hear it at this
17 time. Consider it and give me a brief on it. But I
18 would suggest maybe evidence is better for you.

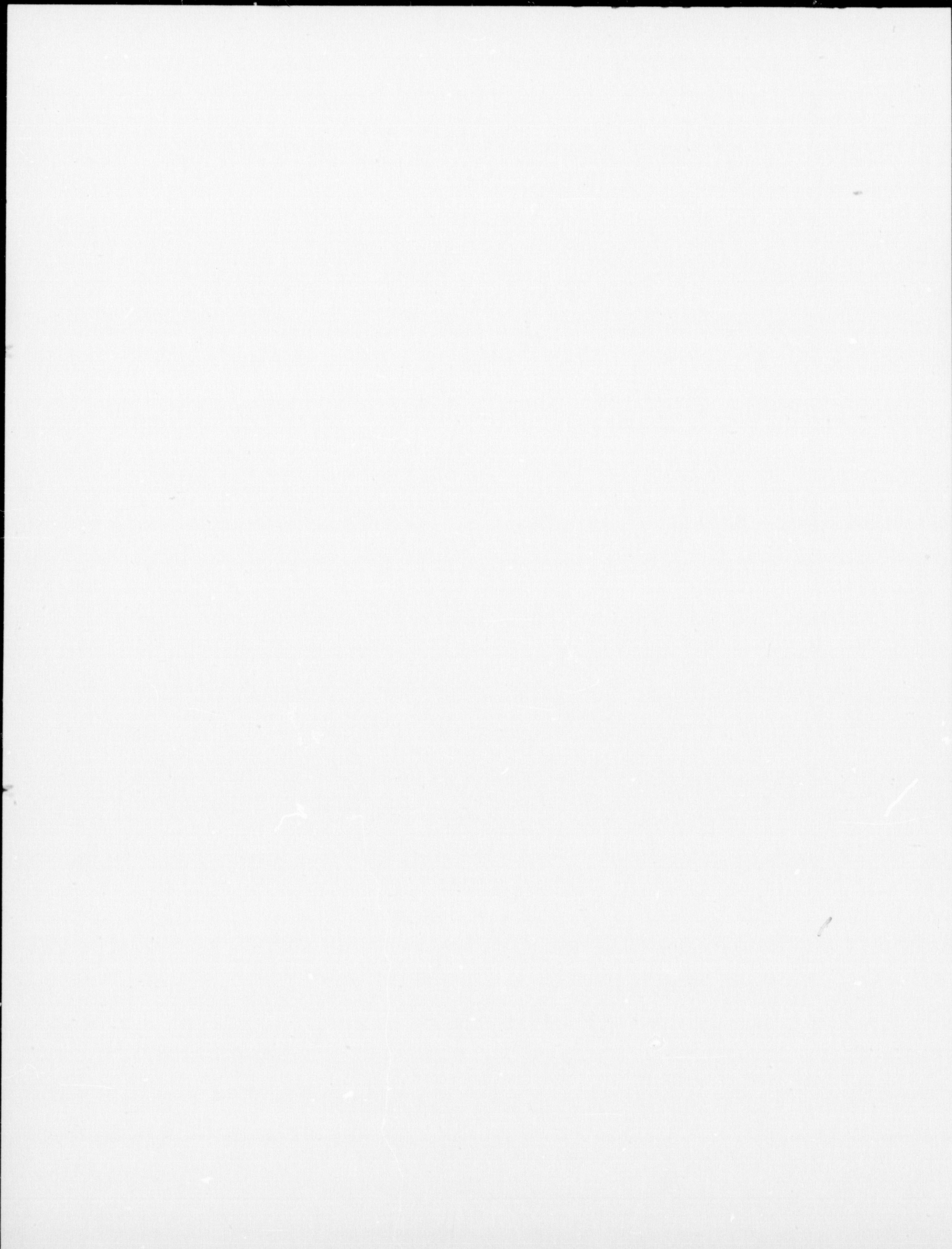
19 MR. DE PETRIS: Well, I have two points on that.
20 If --

21 THE COURT: All right. I can't hear you now.

22 MR. SUTTER: Judge, if he wants to avoid re-open-
23 ing for that, I will offer no objection.

24 THE COURT: Thank you.

25 It's very generous.



MR. DE PETRIS: The Government --

MR. SUTTER: I didn't think it would work, any-
way.

MR. DE PETRIS: The Government does not desire
to reopen. But I would like to put my position on the
record. I have discussed it with Mr. Trager.

THE COURT: I will be delighted to hear you. We
can do it all at 3:00 o'clock tomorrow. Then you can do
it at length.

Good night. Thank you very much, Gentlemen.

(Whereupon, an adjournment was taken to Friday,
November 22, 1974, at 10:45 A.M.)

1
m 3/1 2
3 THE COURT: Here is a copy of the proposed
4 charge.

5 MR. SUTTER: Thank you.

6 MR. DE PETRIS: Thank you.

7 MR. SUTTER: I acknowledge the receipt of
8 the same.

9 THE COURT: I would appreciate your going
10 over it and making very specific suggestions based
11 on the proposals page by page, so we can proceed
12 promptly.

13 MR. SUTTER: May we take the liberty of
14 numbering the pages consecutively?

15 THE COURT: Yes.

16 MR. DEPETRIS: Before I proceed to the formal
17 advertising, I would just point out that the Govern-
18 ment will probably revise its economic coercion
19 request in light of the fact that there has been
20 no evidence of any threats.

21 Simply a charge that economic pressure is no
22 defense. I wanted to bring that to your Honor's
23 attention. I do not know what is in your proposed
24 charge.

25 Now, on the question of the prime contract,
whether it is negotiated, the evidence in this case

1 does show that it was in fact negotiated pursuant
2 to an applicable statute.

3 THE COURT: What is the evidence, the stamp
4 and the checkmarks?

5 MR. DE PETRIS: Yes.

6 THE COURT: Do we have testimony as to what
7 those things mean?

8 We have had your statement to the jury. Is
9 it conceded that the statement is accurate?

10 MR. SUTTER: That he made to the jury?

11 THE COURT: Yes.

12 MR. SUTTER: I concede that is what the
13 contract states and I concede his reading of the
14 statute to the jury was accurate.

15 THE COURT: And if a witness were called, he
16 would testify that those check marks were meant to
17 refer as he indicated?

18 MR. SUTTER: If a witness were called he
19 would testify that the contracts had that written
20 on it, which Mr. De Petris told us.

21 THE COURT: You are not conceding this is
22 not what it means?

23 MR. SUTTER: No, sir.

24 THE COURT: You had better bring in the
25 witness that that is what they mean.

1
2
3 MR. SUTTER: Judge, my position --

4 MR. DE PETRIS: If I understand Mr. Sutter's
5 position, it is as follows: I have two points to
6 make with respect to it.

7 First, I will state what I understand his
8 position to be. If I am inaccurate, I am sure he
9 will correct me. That is, it may well be that the
10 individual who negotiated the contract on behalf of
11 the Navy did so improperly. That is, the conditions
12 in subdivisions 10 and 14 of the applicable statutes
13 were not met.

14 Is that accurate?

15 MR. SUTTER: Correct, one of them requires
16 the decision of the Secretary of the Navy in order to
17 negotiate such a contract.

18 MR. DE PETRIS: That is true. Section 14 is
19 the personal prerogative of the Secretary of the Navy.
20 Section 10 is the contracting officer on behalf of
21 the Navy has the right to make the determination.

22 The Government's position is twofold: The
23 evidence has shown that the contracts were in fact
24 negotiated. That is made without formal advertising
25 as required by the statute. Therefore, it does not --
it has no relevance to the case whether or not it

1 may possibly have been improperly negotiated.

2 THE COURT: I think you are probably right.
3 What is the situation? Was it properly negotiated
4 or was it not?

5 MR. DE PETRIS: As far as I am aware, it was.

6 THE COURT: Why don't you put someone on to
7 say so?

8 MR. DE PETRIS: The Government does not see
9 that it should be put into the position of calling
10 the Secretary of the Navy.

11 THE COURT: You do not have to call him.
12 There must be some order of this in the Grumman files
13 or the Navy files.

14 Dunn could testify to it, I suppose, can't he?

15 MR. DE PETRIS: No, your Honor. He was a
16 little unclear. He had a belief.

17 THE COURT: I see.

18 MR. DE PETRIS: Secondly, there has been no
19 evidence in this case that they were improperly
20 negotiated and we have the presumption of the
21 regularity of administrative proceedings. In the
22 absence of any evidence to the contrary, we have
23 the presumption that they were properly negotiated.
24 I would submit before any argument can be made to
25 the jury --

1 THE COURT: I will let him make the argument.
2
3 I do not think it makes a bit of difference whether
4 it was validly or invalidly negotiated. I haven't
5 received any briefs from anyone. I just do not
6 see that it should make any difference. It may be
7 that somebody could have challenged it. The work
8 was all delivered. It was paid for. I do not see
9 how you can bribe people just before the contract
10 was not executed in accordance with the details
11 of the law. You may be right. All I am saying is
12 that there is possibly a basis for an appeal here.
13 The record is not clear to me and apparently it is
14 not clear to you. I do not understand with all the
15 money spent on this that somebody does not check and
16 get somebody down to testify. There must be a record
17 some place. The Pentagon is not sloppy on things
18 like this.

19 MR. DE PETRIS: All the record would show is
20 that a decision was made that these conditions existed.
21 It still wouldn't satisfy Mr. Sutter's objection as
22 to whether or not the decision was properly made to
23 do so. You'd have to get in the person who made the
24 decision.

25 THE COURT: No, there must be a record some
place of what decision the Navy made.

1 MR. DE PETRIS: The record will show nothing
2 more than the face of the contract and --

3 MR. SUTTER: I am sure that is not true.

4 THE COURT: Of course it is not. There must
5 be an internal memorandum that handled this non-
6 advertised contract.

7 MR. DE PETRIS: That is correct.

8 THE COURT: Where is the memorandum?

9 MR. DE PETRIS: I do not know, your Honor.

10 THE COURT: Why don't you look for it. You
11 have got an FBI agent here. I do not understand why
12 we are fiddling around with something when it is
13 simple enough to get the proof. There must be a
14 document down there in Washington that they'd be
15 happy to make available to you.

16 MR. DE PETRIS: And Mr. Sutter would still
17 make the same argument that it was improperly ne-
18 gotiated.

19 MR. SUTTER: No, I wouldn't make that argument.
20 May I make my position clear?

21 THE COURT: It would be helpful.

22 MR. SUTTER: I do not take the position that
23 we have the right to challenge the judgment of a
24 contracting officer or the judgment of the Secretary
25 of the Navy. My position merely is that they had to

1
2 come to the conclusion to go within the exceptions
3 and there must be evidence that they did so.

4 Whether properly, improperly , I will concede
5 is not in issue in the case. As we stand now on the
6 record, there is not proof there was a viable contract
7 on a prime basis with Grumman.

8 THE COURT: I understand that position. It
9 seems to be easy enough to meet. If you do not
10 want to meet it, then you won't and we will go to
11 the record.

12 I will see what the requests are, if any,
13 from counsel and we will give it to the jury, but
14 it does seem to be unnecessary to not tie up a loose
15 end when it is simple enough to do it.

16 You have a full day. Monday is not a trial
17 day. I will be out in Suffolk.

18 What else do you want?

19 MR. DE PETRIS: That is all, your Honor.

20 THE COURT: All right. If you are going to go
21 forward with the theory, it will be helpful to have
22 requests to charge. If you do not, that is perfectly
23 all right, too.

24 MR. SUTTER: We are typing up the requests
25 tomorrow and we will go over this charge tomorrow
morning also. I will get in touch with Mr. De Petris

1 on Monday morning and see whether or not we can
2 straighten out the situation on the contract. May
3 we have liberty to deliver any papers or documents
4 to your chambers here on Monday?
5

6 THE COURT: Yes, certainly. There will be
7 somebody here.

8 MR. DE PETRIS: If I understand it correctly,
9 your Honor would be completely satisfied if we were
10 to produce a document which showed such and such
11 section -- sections 10 and 12 -- were met without
12 producing any witnesses?

13 THE COURT: I think normal business would be
14 an official record. I wouldn't think that counsel
15 for the defendants would want an Admiral to come
16 down here to be injected into the case as to every-
17 thing else.

18 MR. SUTTER: Not even a Lieutenant Commander,
19 your Honor.

20 THE COURT: I would think so.

21 MR. DE PETRIS: That's the only problem that
22 I will have the FBI check on. I had thought that the
23 position of Mr. Sutter was one further step down the
24 line, testing whether it is improper.

25 THE COURT: He wants to make sure that the
Pentagon did the work properly. He is not interested

1 in the merits.

2 Thank you, gentlemen.

3 MR. SUTTER: Thank you.

4 MR. DE PETRIS: Thank you.

5 (Trial adjourned to Tuesday, November 26,
6 1974, at 10 a.m.)

7 - - -
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

91 We do have those papers with respect to the
2 contracts.

3 Perhaps we can have them marked?

4 THE COURT: Any objection to having them marked?

5 MR. SUTTER: No, sir.

6 MR. DE PETRIS: May I state that these are
7 documents from the Navy setting forth findings pursuant
8 to the two statutes that were read before, authorizing
9 negotiation of the five prime contracts that we re-
10 ferred to during the course of the trial.

11 THE COURT: Mark them as one document.

12 THE CLERK: Government's Exhibit 34 in evidence.

13 MR. SUTTER: I do not concur with the conclusions,
14 but I have no objection to the offering of the exhibit.

15 THE COURT: Yes, they will speak for themselves.

16 Now ladies and gentlemen, you have heard all of
17 the testimony. There have been some documents which
18 have been marked in evidence which you have not yet
19 seen.

20 Some of them will be referred to in summation.
21 All of them will be available to you during your delibera-
22 tions, if you wish to see them.

23 We have some matters to take care of in Court.

24 Is there any objection to my letting the Jury
25 go for the evening?

1 Jury on either of those matters, I shall be happy
2 to give it in the words that counsel wishes.
3

4 MR. SUTTER: Thank you, sir.

5 THE COURT: Try to supply a written instruc-
6 tion so there will be no mistake about what you wish,
7 and in the absence of such a written submission I
8 shall assume you want no special instruction.

9 MR. SUTTER: I assume I would have to prepare
10 such a submission prior to the charge.

11 THE COURT: Certainly.

12 MR. SUTTER: Thank you, sir.

13 I further move for a judgement of acquittal pur-
14 suant to Rule 28 with respect to all of what we have
15 been referring to as the substantive counts of the
16 indictment and that portion of the two conspiracy
17 counts of the indictments insofar as they deal with a
18 conspiracy or an alleged conspiracy to violate the
19 positions of Title 41 of the United States Code.

20 The basis for my motion is relatively simple
21 and does present what I believe to be a question of
22 law as opposed to a question of fact. There can be
23 no doubt that section 54 of Article 41, or Title 41,
24 I should say, is the penal proscription for a violation
25 of those items set forth in Section 51.

Now 51, of course, has an interesting legislative

1 history. Initially it dealt with only a certain
2 type of contract, it dealt with the so-called cost-
3 contract. The cases are, I believe, unanimous in
4 holding that unless there was established beyond a
5 reasonable doubt that the contract, under the old
6 statute with which we dealt, was in fact a cost-plus
7 contract, there could be no conviction under the
8 statute.

9 Now if we go to the revision in the statute,
10 we now deal with what is referred to as a "negotiated"
11 contract.

12 I think there can be little doubt that the old
13 law limiting the type of contract and the Congressional
14 intent set forth in Section 51 is equally clear that
15 there must here be proof that these prime contracts
16 were in fact negotiated and that they were legally
17 negotiated. There has been presented in evidence
18 documents from contracting offices and from I believe
19 the UnderSecretary of the Navy --

20 MR. DE PETRIS: Assistant.

21 MR. SUTTER: Assistant secretary -- thank you --
22 of the Navy concerning findings that they have made
23 with respect to permission to negotiate contracts
24 with about every aircraft manufacturer that ever had
25 a plane in fleet service in the United States Navy.

1 I did not doubt the authenticity of those
2 documents, I consented that they go into evidence.
3 But the problem is that there is no testimony from any-
4 one in this case that ties these prime contracts to
5 the authority that was issued by either the contracting
6 officer or the assistant secretary of the Navy.

7 In other words, it seems to me that somebody
8 in Grumman must have either negotiated or advertised
9 those contracts.

10 It impresses me that it would be so simple to
11 have brought in someone to say, Oh, yes, prime contract
12 number 000, we went through them, was negotiated
13 pursuant to this authority, or someone from the Navy
14 could have done it, and that all of these prime
15 contracts were in fact negotiated under that authority.

16 There is nothing that ties that authority to
17 any prime contract with which we deal with here.

18 As such, I submit there is a failure of proof
19 as a matter of law on those counts. Further, the
20 statute and the so-called rules which in the Code
21 of Federal Regulations, Title 41, on public contracts
22 defines a negotiated contract as one which is had with-
23 out formal advertising. There is no testimony that
24 is competent in this case that these contracts were
25 not formally advertised --

1 THE COURT: You are dealing with the prime
2 contract?

3 MR. SUTTER: That is correct, I am still on the
4 prime.

5 We had Mr. Dunn, he didn't know, he thought
6 they were not -- he didn't think it was the usual
7 procedure.

8 I submit that is insufficient evidence, that is
9 totally insufficient. With all of the money that has
10 been expended here, why couldn't we have someone from
11 Grumman come in and tell us what happened, what
12 authority did they proceed under, was this a negotiated
13 contract, was it done without formal advertising. I
14 think we would be foolish to assume that in Grumman,
15 that nobody in Grumman knows how these contracts came
16 about, nobody knows whether it was pursuant to that
17 authority.

18 I submit, Judge, there is a total failure to
19 establish that the prime contract is the type of con-
20 tract that fits within the proscription of Section 41
21 as implemented by Section 45. In the absence of that
22 evidence, I submit most respectfully that your Honor
23 should direct an acquittal with respect to those
24 substantive counts and those portions of the conspiracy
25 counts that deal with those prime contracts.

1 2 THE COURT: I think I've read most of the
2 material, I don't believe I have seen 34.

3 May I just see those letters?

4 Proceed, please.

5 MR. SUTTER: I further move, if your Honor
6 pleases, to dismiss -- if I may have a moment to get
7 the indictment.

8 THE COURT: Well, it does seem to me that 34
9 covers this matter. It is specifically with reference
10 to the Grumman contracts, rather the Grumman plane,
11 and the letters indicate why they use negotiated rather
12 than advertising.

13 MR. De PETRIS: The prime contract number is on
14 each one of those.

15 THE COURT: I don't myself see the grounds for
16 that argument any longer in view of 34.

17 You may of course argue to the jury.

18 That motion is denied.

19 MR. SUTTER: I further move, if your Honor pleases,
20 to dismiss under Indictment 74 CR 588, and that is what
21 I choose to call the underlying indictment, all of the
22 so-called substantive counts with the exception of the
23 one count that relates to purchase order 90-76310, and
24 that would be Government's Exhibit 5.

25 The basis of that motion is relatively simple:

4

Summation-De Petris

Theil Technical Services, Inc.

Who were Olaf Andreassen and William Sheridan?

The evidence has shown that they were employees of the Grumman Aerospace Corporation, a company which produced aircraft, support equipment and technical manuals mostly for the Department of the Navy. Andreassen was a program supervisor in the Publications Department and his program was the Out of Production Aircraft.

William Sheridan was in Publications Control, in effect, a business manager under the E-2 program, and his supervisor was Robert Ragozzine.

What was the relationship between Theil, Grumman and the Navy? You will recall the testimony of Howard Dunn concerning the nine subcontracts and five prime contracts involved in this case. Grumman held various prime contracts with the Navy for furnishing of supplies, materials, equipment and services. There are five such contracts involved in this trial. I will not read off their numbers at this time, they are in the record. I would point out that in each one of the subcontracts, the nine subcontracts in evidence, the number of the prime contract is contained on the first page of the purchase order, and there were five such prime contracts involved with respect to the nine

1 5

Summation-De Petris

2 subcontracts introduced in evidence. Three of these
3 contracts, Mr. Dunn testified, were basic ordering
4 agreements for supplies and services ordered by the
5 Navy, including technical manuals for various models
6 of aircraft delivered by Grumman to the Navy. Another
7 one of the prime contracts was to supply 78 aircraft,
8 Model A-6A, and deliver certain technical manuals to
9 support that aircraft. The fifth prime contract between
10 Grumman and the Navy was to supply 11 aircraft, Model E-2C
11 and to deliver technical manuals to support that air-
12 craft.

13 The question is were these contracts negotiated,
14 that is, made without formal advertising, and this is
15 one of the elements of the crime that you will have
16 to answer from the evidence. You will recall that
17 there was a stipulation which was entered into, and
18 that is that on the face of each one of these five
19 contracts Item 13 states as follows:

20 "This procurement was," and then there was a
21 box that was checked, "negotiated."

22 There was also a box that was checked contain-
23 ing the section of the law under which the contracts
24 were negotiated.

25 We also have in evidence the internal documents-

6

Summation-De Petris

from the Navy (indicating), giving the findings and the reasons for entering into a negotiated contract.

The defendant has offered no evidence to the contrary, therefore we concede there is no real dispute that these contracts were negotiated.

Pursuant to these five fine contracts, Grumman was called upon to deliver certain technical manuals to the Navy, and in order to accomplish that, Grumman entered into various purchase orders with the subcontractor, and we have seen nine such subcontracts introduced into evidence during the course of the trial, subcontracts calling for the production of technical manuals required for the performance of Grumman's contract with the Navy.

(Continued on next page.)

K:tr
5/2

Charge of the Court

816

THE COURT: What I shall refer to as Count 7, although it is the second count in the second indictment, reads as follows:

"In or around December 1973, within the Eastern District of New York, the defendant John R. Martin and Thiel Technical Services, Inc., directly and indirectly, and on behalf of a subcontractor, to wit: Thiel Technical Services, Inc., did knowingly give to William George Sheridan a fee, commission, compensation, gift and gratuity, that is, \$500 in United States currency, as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgment of subcontract and orders previously awarded by the Grumman Aerospace Corporation to Thiel Technical Services, Inc., "In violation of the same section."

Now these provisions of the law with respect to the payment of kickbacks reads as follows, and these are sections 51 and 54:

"The payment of any fee, commission or compensation of any kind or the granting of any gift or gratuity of any kind, either directly or indirectly, by or on behalf of a subcontractor to any employee

1
2 of a prime contractor holding a negotiated contract
3 entered into by any department, agency, or establish-
4 ment of the United States for the furnishing of
5 supplies, materials, equipment or services of any
6 kind whatsoever either as an inducement for the
7 award of a subcontract or order from the prime
8 contractor or as an acknowledge of a subcontract or
9 order previously awarded is prohibited."

10 "Any person who shall knowingly, directly or
11 indirectly, make any such prohibited payment" shall
12 be guilty of an offense against the laws of the
13 United States.

14 The term "prime contractor" has the meaning
15 I just read to you in Section 51 of the statute,
16 that is to say a person who gets a direct contract
17 from an agency, here the Navy of the United States.
18 A subcontractor, a person and a negotiated contract
19 are also defined.

20 A subcontractor is defined as "any person, in-
21 cluding a corporation, who hold an agreement or
22 purchase order to perform all or any part of the
23 work or to make or to furnish any article or service
24 required for the performance of a negotiated con-
25 tract."

A person includes a corporation and an individual, and a negotiated contract is one defined as "made without formal advertising." Now seven essential elements are required to prove beyond a reasonable doubt the violation of this Section:

First, the payment of any fee, commission, or compensation of any kind, or the granting of any gift or gratuity of any kind, either directly or indirectly.

As I understood Mr. Martin's and Mr. Rutkowski's testimony, they admitted making the payments and giving gratuities to Andreassen and Sheridan.

Second: The payment must be on behalf of the subcontractor. As I understand Mr. Martin's and Mr. Rutkowski's testimony they had made payments on behalf of Thiel to get subcontracts for Thiel or acknowledgement of subcontracts.

Third: The payment must be through an employee or agent of a prime contractor. As I understand Mr. Martin's and Mr. Rutkowski's testimony, the believed and in fact they were, that is Andreassen and Sheridan, were employees of Grumman who had some kind of Government contracts.

Fourth: The prime contractor must hold a negotiated contract entered into any department, agency or establishment of the United States. The Government contends that the documents in the case show there were negotiated prime contracts held by Grumman as a prime contractor. They include Exhibit 34, as I recall letters from the Navy, and the individual subcontract files. The defendants, as I recall, gave no testimony on this element.

Fifth: The contract must be for the purpose of furnishing supplies, materials, equipment or services of any kind. As I understand the contentions of the parties, there is no dispute that the furnishing of these manuals were services or supplies within the meaning of the statute.

Sixth: The payment must be made knowingly. As I understand the testimony of Rutkowski and Martin, they knew they were paying kickbacks.

Seventh: The payment must be done as an inducement for the award of a subcontract or order from the prime contractor or payment must be as an acknowledgement of a subcontract or order previously awarded. As I understand the testimony of Martin,

1
2 he knew he was doing this, but he did it because it
3 was the only way to get normal writing business, that
4 is manual writing business from Grumman and the work
5 was well performed.
6

7 Now it is your understanding of the testimony
8 and the contentions of the party that governs, not
9 mine.
10

11 There is no contention that I know of that
12 the work was not properly performed.
13

14 I have already told you what a prime contractor
15 is, what a subcontractor is, and the very terms
16 themselves suggest what they are.
17

18 I've already told you that an act is done
19 knowingly if it is done voluntarily and intentionally
20 and not because of mistake or accident or other
21 innocent reason.
22

23 To act with an intent to influence means to
24 act with the specific intent to affect or have an
25 effect on the conduct or actions of another. In
considering this element, you are called upon to
determine what was in the defendant's mind and the
purpose which motivated him in his conduct.

Direct proof, as I have told you, is rarely
available to establish intent and you have to con-

1
2 (The sidebar conference then continued without
3 the hearing of the jury.)

4 MR. SUTTER: Also, the point that you casually
5 mentioned, and it wasn't in print, that the defendant
6 offered no testimony in connection with a negotiated
7 contract, I merely request that you tell the jury the
8 defendant is under no obligation to do so.

9 (The Court then addressed the jury as follows).

10 THE COURT: I indicated to you that the defendants
11 offered no testimony on the question whether these
12 were negotiated contracts.

13 The defendants are under no obligation to do so,
14 that is the Government's burden, to prove that beyond
15 a reasonable doubt.

16 (The sidebar conference then continued without
17 the hearing of the jury).

18 MR. SUTTER: I have no other exceptions or
19 requests other than I heretofore made on the record.

20 THE COURT: All right.

21 Where is the Marshal?

22 (The trial then proceeded within the hearing
23 of the jury.)

24 THE COURT: We will swear the Marshal in in your
25 absence --

Government Exhibit 34

DETERMINATION AND FINDINGS

Authority to Negotiate Class of Contracts

RAN CTF AIR 71-7
NAVAIR No. 704-71

Upon the basis of the following findings and determination, which I hereby make as Assistant Commander of Contracts, the proposed class of contracts described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10).

Findings

1. The class of contracts proposed (orders issued under basic ordering agreements) will be for services and materials consisting of:

(a) (i) Change kits, together with installation instructions, as required to retrofit changes in aircraft, including related equipment installed therein (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer); (ii) engineering, prototyping and testing of such changes; and (iii) technical manual changes or revisions, or new technical manuals, as required incident to such changes.

(b) (i) Change kits, together with installation instructions, for contractor-furnished ground support equipment, and new items of ground support equipment as required incident to aircraft changes referred to in subparagraph (a) above (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer); and (ii) technical manual changes or revisions, or new technical manuals, covering ground support equipment as required incident to such changes.

(c) Changes or revisions, other than those referred to in subparagraphs (a) and (b) above, to existing technical manuals covering out-of-production aircraft and any related equipment (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer), as required to provide up-to-date information on operation and maintenance of such aircraft and equipment. For purposes of changes and revisions covered in this subparagraph (c), aircraft and related equipment shall be considered out-of-production at such time as the last publication, or change or revision thereto, has been delivered under the production contract for such aircraft and equipment.

(d) (i) Change kits, for maintenance and operational trainers, consisting of those new or revised materials and parts specially selected for use in the trainers; new or revised parts, components, or subassemblies for use in training; (ii) providing instructional services to training instructors relative to these change kits; and (iii) contractor technical assistance on site, either at a Government facility or at a contractor's plant, for setup and checkout of these change kits, which are required to provide updated training made necessary by the change kits referred to in subparagraphs (a) and (b) above.

(e) Change kits, consisting of new and revised materials, components, subassemblies, and spare and repair parts, as required to support the modified configurations resulting from the change kits referred to in subparagraphs (a), (b), and (d) above.

Government Exhibit 34

The selected materials and parts (including training parts), components, and subassemblies, covered by subparagraph (d) above, and the materials, components, subassemblies, and spare and repair parts, covered by subparagraph (e) above are limited to those not previously identified and included in the supply system, for initial support (for the requirements during the period applicable under normal provisioning procedures for materials, components, subassemblies, and parts, similar to the particular item involved, but in no event for a period exceeding twelve months from the date of first delivery of each kit to be supported) of the in-service use of the change kits described in subparagraphs (a), (b), and (d) above.

2. Orders within the scope of this Class Determination and Findings will include the furnishing of all material, parts, components, subassemblies, and documentation necessary for the change kits covered by subparagraphs (a), (b), (d), and (e) of paragraph 1 above. The documentation will present by text and illustration the information necessary for the installation or use of these kits by Government personnel and for their appropriate logistic support, and will include any relevant technical manual changes or revisions or new technical manuals; however, such orders will include the furnishing of only such materials, parts, components, subassemblies, and documentation as are necessary therefor. The work to be performed under each basic ordering agreement will relate only to previously produced aircraft and related equipment, and documentation. It will not include any research and development effort; nor will it include the furnishing of any parts, materials, components, or subassemblies, which are not an integral part of the work described above.

3. Changes in the design, equipment, or outfitting of military aircraft are required on a continuing basis in order to improve safety, combat readiness, and general capabilities. Such changes most frequently occur after partial delivery of aircraft and at a point in production where it is no longer practicable to incorporate them in production in some of the aircraft remaining to be delivered. Also, they may occur after the aircraft model is out of production. Accordingly, the proposed basic ordering agreements will be utilized to make aircraft of a particular model substantially identical in configuration and to provide delivered aircraft with the latest changes and developments. Publications furnished by the contractor also require modifications in a timely manner in order to reflect changes made in the aircraft, its related equipment, and its ground support equipment, and to provide new and improved operational and maintenance techniques.

4. The class of contracts proposed is to be negotiated with the firms listed below and will relate solely to the specific aircraft indicated. These firms are the designers, developers, and sole manufacturers of the respective aircraft. The items required are complex, technical, and specialized, and a thorough knowledge of their design, production, and assembly is essential in order that the various categories of work described above may be timely performed.

Government Exhibit 34

Such knowledge, with respect to these aircraft, is unique to the contractors listed below. No other contractors have the requisite knowledge of and familiarity with these highly technical items to accomplish the necessary work within the required time frame. In the case of related equipment and ground support equipment within the scope of this Class Determination and Findings, the airframe manufacturer may have subcontracted large portions of design, development, and manufacture to other contractors while retaining overall design control. It is, therefore, necessary that orders for the work involved be placed with him in a manner that permits him to maintain the compatibility of the related equipment and ground support equipment with the airframe. The use of negotiation in place of formal advertising is justified because it is impracticable to secure competition for such procurements.

<u>CONTRACTOR</u>	<u>AIRCRAFT</u>
Sikorsky Aircraft Division, United Aircraft Corp.	H-3, H-52, H-53, H-34 and OH-3D
Lockheed Georgia Co.	C/KC/LC-130 Series
Lockheed California Co.	F-2, SP-2, P-3, EP-3, AP-2H, and and C-121 Series, YP-3C
North American Rockwell Corp., Columbus	RA-5C, T-2, T-28, and OV-10 Series
North American Rockwell Corp Los Angeles	T-39 Series
Bell Helicopter Co., Division Bell Aerospace Corporation	AH/UH/TH-1, H-1 and TH-57 Series
Kaman Aircraft Corporation	UH-2, HH-2 and HH-43 Series
Grumman Aircraft Engineering Corporation	F-9, F-12, EA-6A, EA-6B, A-6, C-1, C-2, E-1, E-2, S-2, F-1B, EC-1, F-14, KA-6D, and TC-4 Series
The Boeing Company, Vertol Division	UH/CH-46 and H-46 Series
LTV Aerospace Corporation Vought Aeronautics Division	A-7, A-7D and F-8 Series
McDonnell Douglas Corp., St. Louis	YF/F/RF-4 Series
McDonnell Douglas Corp., Long Beach	A-1, A-2, A-4, and TA-4 Series
Qyrodyne Company of America	QH-50 Series (DASH) Weapons Systems

Government Exhibit 34

Determination

The proposed class of contracts is for property and services for which it is impracticable to obtain competition. This Class Determination and Findings shall be effective from 1 July 1971 through 30 June 1972.

Condition of Use

The authority of this Class Determination and Findings shall be used only when the person placing an individual order certifies, in writing, at the time of placing such order, that it is for property or services authorized by this Class Determination and Findings.

8 APR 1971

Date

26

E E McJannet

E E McJANNET
ASSISTANT COMMANDER FOR CONTRACTS

Government Exhibit 34

Authority to Negotiate Class of Contracts

CUP AIR 72-7

On the basis of the following findings and determination, which I hereby make as Assistant Commander for Contracts, Naval Air Systems Command, the proposed class of contracts described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10).

Findings

1. The class of contracts proposed (orders issued under basic ordering agreements) will be for services and materials consisting of:

(a) (i) Change kits, and technical directives therefor, and engineering and supply data, as required in direct support of aircraft retrofit changes, including related equipment installed therein (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer); (ii) engineering, prototyping, trial kit installation, verification kit proofing and testing of such changes; and (iii) technical manual changes and revisions, or new technical manuals, operator checklists, maintenance program tapes, as required incident to such changes.

(b) (i) Change kits, together with installation instructions, for contractor-furnished ground support equipment, and new items of ground support equipment as required incident to aircraft changes referred to in paragraph (a) above (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer); and (ii) technical manual changes or revisions, or new technical manuals, covering ground support equipment as required incident to such changes.

(c) Changes or revisions, other than those referred to in subparagraphs (a) and (b) above, to existing technical manuals, or new technical manuals, operator checklists, maintenance program tapes, covering out-of-production aircraft and any related equipment (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer), as required to provide up-to-date information on operation and maintenance of such aircraft and equipment. For purposes of changes and revisions covered in this paragraph (c), aircraft and related equipment shall be considered out-of-production at such time as the last publication, or change or revision thereto, has been delivered under the production contract for such aircraft and equipment.

(d) (i) Change kits, consisting of selected parts, materials, additional maintenance training units, graphic aids, data and services (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer) for Naval Air Maintenance Trainers; Operational Flight

ONLY COPY AVAILABLE

Government Exhibit 34

Trainers; Weapon System Trainers; Cockpit Procedures Trainers; Cockpit Orientation Trainers; and other operator trainers and devices to incorporate related series and item (aircraft, weapons system, or equipment and related materials) production or retrofit changes in maintenance training equipment, related materials, services and data delivered by the contractor to the Government, provided the related aircraft is out-of-production. For purposes of this item, an aircraft is not to be considered out-of-production until the last aircraft of its model has been delivered under the production contract; and (ii) contractor engineering and technical services training at the manufacturer's plant or on site at a Government facility as required to provide initial operator and maintenance training to Government personnel in support of production or retrofit changes incorporated in the related series and item.

(e) Change kits, consisting of spares and repair parts, as required to support the modified configurations resulting from the change kits referred to in subparagraphs (a), (b) and (d) above (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer).

(f) Preparation of engineering change proposals in support of operational and safety improvement program requirements.

The selected parts and materials, covered by subparagraph (d) above, and the spares and repair parts, covered by subparagraph (e) above are limited to those not previously identified and included in the supply system, for initial support (for the requirements during the period applicable under normal provisioning procedures for materials, components, subassemblies, and parts, similar to the particular item involved, but in no event for a period exceeding twelve months from the date of first delivery of each kit to be supported) of the in-service use of the change kits described in subparagraphs (a), (b) and (d) above.

2. Orders within the scope of this Class Determination and Findings will include the furnishing of all material, parts, components, subassemblies, and documentation necessary for the change kits covered by subparagraphs (a), (b), (d) and (e) of paragraph 1 above. The documentation will present by text and illustration the information necessary for the installation or use of these kits by Government personnel and for their appropriate logistic support, and will include any relevant technical manual changes or revisions or new technical manuals; however, such orders will include the furnishing of only such materials, parts, components, subassemblies, and documentation as are necessary therefor. The work to be performed under each basic ordering agreement will relate only to previously produced aircraft and related equipment, and documentation. It will not include any research and development effort; nor will it include the furnishing of any parts, materials, components, or subassemblies, which are not an integral part of the work described above.

Government Exhibit 34

Changes in the design, equipment, or outfitting of military aircraft are required on a continuing basis in order to improve safety, combat readiness, and general capabilities. Such changes most frequently occur after partial delivery of aircraft and at a point in production where it is no longer practicable to incorporate them in production in case of the aircraft remaining to be delivered. Also, they may occur after the aircraft model is out of production. Accordingly, the proposed basic ordering agreements will be utilized to make aircraft of a particular model substantially identical in configuration and to provide delivered aircraft with the latest changes and developments. Publications furnished by the contractor also require modifications in a timely manner in order to reflect changes made in the aircraft, its related equipment, and its ground support equipment, and to provide new and improved operational and maintenance techniques.

4. The class of contracts proposed is to be negotiated with the firms listed below and will relate solely to the specific series aircraft indicated. These firms are the designers, developers, and sole manufacturers of the respective aircraft. The items required are complex, technical, and specialized, and a thorough knowledge of their design, production, and assembly is essential in order that the various categories of work described above may be timely performed. Such knowledge, with respect to these aircraft, is unique to the contractors listed below. No other contractors have the requisite knowledge of and familiarity with these highly technical items to accomplish the necessary work within the required time frame. In the case of related equipment and ground support equipment within the scope of this Class Determination and Findings, the aircraft manufacturer may have subcontracted large portions of design, development, and manufacture to other contractors while retaining overall design control. It is, therefore, necessary that orders for the work involved be placed with him in a manner that permits him to maintain the compatibility of the related equipment and ground support equipment with the aircraft. The use of negotiation in place of formal advertising is justified because it is impracticable to secure competition for such procurements.

CONTRACTORAIRCRAFT SERIES

United Aircraft Corporation
Sikorsky Aircraft Division
Stratford, Connecticut

H-3, H-34, H-34 and H-53

Lockheed Aircraft Corporation for its
Division, Lockheed-Georgia Company
Marietta, Georgia

C-130

Lockheed Aircraft Corporation for its
Division, Lockheed-California Company
Burbank, California

F-2, F-3 and C-121

Government Exhibit 34

CONTRACTORAIR VET SERIES

North American Rockwell Corporation
Columbus, Division
Columbus, Ohio

T-2, T-28, OV-10 and A-5

North American Rockwell Corporation
Los Angeles Division
Los Angeles, California

T-39

Textron, Incorporated
Bell Helicopter Company, Division
Forth Worth, Texas

H-1 and H-57

Kaman Corporation
Kaman Aircraft Division
Bloomfield, Connecticut

H-2 and H-43

Grumman Aerospace Corporation
Bethpage, Long Island, New York

F-9, F-11, A-6, C-1, F-14,
C-2, E-2, S-2, E-1, TC-4

The Boeing Company
Vertol Division
Philadelphia, Pennsylvania

H-16

MTV Aerospace Corporation
Vought Aeronautics Division
Dallas, Texas

A-7 and F-8

McDonnell Douglas Corporation
St. Louis, Missouri

F-4 and AV-8

McDonnell Douglas Corporation
Douglas Aircraft Division
Long Beach, California

A-1, A-3 and A-4

Determination

The proposed class of contracts is for property and services for which it is impracticable to obtain competition. This Class Determination and Findings shall be effective from 1 July 1972 through 30 June 1973.

Government Exhibit 34

Condition of Use

The authority of this Class Determination and Findings shall be used only when the person placing an individual order certifies, in writing, at the time of placing such order, that it is for property or services authorized by this Class Determination and Findings.

Date

5/27/72

26

27 MAR 1972

E. L. McMorries

E. L. McMorries

Government Exhibit 34

~~CONFIDENTIAL AND SENSITIVE~~

Authority to Reproduce Plans of Construction

7-1-70
EXHIBIT No. 11-70-71

Upon the basis of the following findings and recommendations, which I hereby make as agency head, the proposed plans of construction described below may be recommended to the Secretary of Defense pursuant to the authority of 10 U.S.C. 2332(a)(10).

Findings

1. The plans of construction proposed (plans issued under public contracting agreements) will be for military construction and equipment as follows:

(a) (1) Changes will be required to modify changes in plans, including related equipment, including changes in equipment as has been provided by the Department of Defense, other than the military construction; and (2) equipment, including, and removal of such equipment.

(b) Changes will be related to the proposed equipment and new plans of construction, as required by the Department of Defense, including changes in equipment as has been provided by the Department of Defense, other than the military construction.

(c) Changes in equipment, which may be related to the equipment as (a) and (b) have, to equipment, including changes in equipment as has been provided by the Department of Defense, other than the military construction, as required to provide the Department of Defense, in equipment and equipment of such equipment and equipment. The purpose of the changes and equipment changes in equipment as (a), (b) and (c) will be to provide the Department of Defense, in equipment, as has been provided by the Department of Defense, other than the military construction, for such equipment and equipment.

ONLY COPY AVAILABLE

Government Exhibit 34

(d) (i) Change kits, for maintenance and operational trainers, consisting of those new or revised materials and parts specially selected for use in the trainers; new or revised trainer panels; graphic aids; and other new or revised parts, components, or subassemblies for use in training; (ii) providing instructional services to training instructors relative to these change kits; and (iii) contractor technical assistance on site, either at a Government facility or at a contractor's plant, for setup and checkout of these change kits which are required to provide updated training made necessary by the change kits referred to in subparagraphs (a) and (b) above.

(e) Change kits, consisting of new and revised materials, components, subassemblies, and spare and repair parts, as required to support the modified configurations resulting from the change kits referred to in subparagraphs (a), (b), and (d) above.

The selected materials and parts (including training parts), components, and subassemblies, covered by subparagraph (d) above, and the materials, components, subassemblies, and spare and repair parts, covered by subparagraph (e) above are limited to those not previously identified and included in the supply system, for initial support (for the requirements during the period applicable under normal provisioning procedures for materials, components, subassemblies, and parts, similar to the particular item involved, but in no event for a period exceeding twelve months from the date of first delivery of each kit to be supported) of the in-service use of the change kits described in subparagraphs (a), (b), and (d) above.

2. Orders within the scope of this Class Determination and Findings will include the furnishing of all material, parts, components, subassemblies, and documentation necessary for the change kits covered by subparagraphs (a), (b), (d), and (e) of paragraph 1 above. The documentation will present by text and illustration the information necessary for the installation or use of these kits by Government personnel and for their appropriate logistic support, and will include any relevant technical manual changes or revisions or new technical manuals; however, such orders will include the furnishing of only such materials, parts, components, subassemblies, and documentation as are necessary therefor. The work to be performed under each basic

Government Exhibit 34

ordering agreement will relate only to previously produced aircraft and related equipment, and documentation. It will not include any research and development effort; nor will it include the furnishing of any parts, materials, components, or subassemblies, which are not an integral part of the work described above.

3. Changes in the design, equipment, or outfitting of military aircraft are required on a continuing basis in order to improve safety, combat readiness, and general capabilities. Such changes most frequently occur after partial delivery of aircraft and at a point in production where it is no longer practicable to incorporate them in production in some of the aircraft remaining to be delivered. Also, they may occur after the aircraft model is out of production. Accordingly, the proposed basic ordering agreements will be utilized to make aircraft of a particular model substantially identical in configuration and to provide delivered aircraft with the latest changes and developments. Publications furnished by the contractor also require modifications in a timely manner in order to reflect changes made in the aircraft, its related equipment, and its ground support equipment, and to provide new and improved operational and maintenance techniques.

4. The class of contracts proposed is to be negotiated with the firms listed below and will relate solely to the specific aircraft indicated. These firms are the designers, developers, and sole manufacturers of the respective aircraft. The items required are complex, technical, and specialized, and a thorough knowledge of their design, production, and assembly is essential in order that the various categories of work described above may be timely performed. Such knowledge, with respect to these aircraft, is unique to the contractors listed below. No other contractors have the requisite knowledge of and familiarity with these highly technical items to accomplish the necessary work within the required time frame. In the case of related equipment and ground support equipment within the scope of this Class Determination and Findings, the airframe manufacturer may have subcontracted large portions of design, development, and manufacture to other contractors while retaining overall design control. It is, therefore, necessary that orders for the work involved be placed with him in a manner that permits him to maintain the compatibility of the related equipment

Government Exhibit 34

and ground support equipment with the airframe. The use of negotiation in place of formal advertising is justified because it is impracticable to secure competition for such procurements.

CONTRACTORAIRCRAFT

Sikorsky Aircraft Division,
United Aircraft Corp.

H-3, H-53, and H-34 Series

Lockheed Georgia Co.

C/KC/LC-130 Series

Lockheed California Co.

F-2, SP-2, F-3, EP-3, AP-2H,
and C-121 Series, YP-3C

North American Rockwell Corp.,
Columbus

RA-5C, T-2, T-28, and OV-10
Series

North American Rockwell Corp.,
Los Angeles

T-39 Series

Bell Helicopter Co., Division
Bell Aerospace Corporation

AH/UH/TH-1 and TH-57 Series

Kaman Aircraft Corporation

UH-2 and HH-43 Series

Grumman Aircraft Engineering
Corporation

F-9, F-11, EA-6A, EA-6B,
A-6, C-1, C-2, E-2, S-2,
E-1B, EC-1, KA-6D, and
TC-4 Series

The Boeing Company,
Vertol Division

UH/CH-46 Series

LTV Aerospace Corporation,
Vought Aeronautics Division

A-1 and F-8 Series

McDonnell Douglas Corp.,
St. Louis

YF/F/RF-4 Series

McDonnell Douglas Corp.,
Long Beach

A-1, A-3, A-4, and TA-4 Series

Gyrodyne Company of America

QH-50 Series (DASH) Weapons
Systems

Government Exhibit 34

Introduction

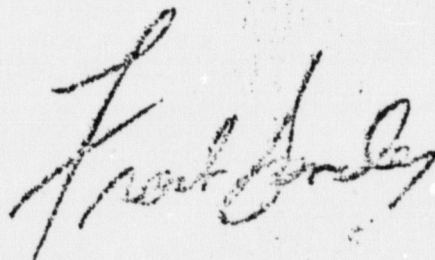
The proposed class of contracts is for property and services for which it is impracticable to obtain information. This Class Introduction and Findings shall be effective from 1 July 1970 through 30 June 1971.

Condition of Use

The utility of this Class Introduction and Findings shall be used only when the person placing an individual order certifies, in writing, at the time of placing such order, that it is for property or services authorized by this Class Introduction and Findings.

Date _____

5 JUL 70



Frank S. Porter
Assistant Secretary of the Navy
(Installation and Logistics)

ONLY COPY AVAILABLE

Government Exhibit 34

DETERMINATIONS AND FINDINGS

Authority to Negotiate Individual Contract

RASC D&F No. 0001-68

Upon the basis of the following findings and determinations which I hereby make as Agency Head, the proposed contract may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(14).

Findings

1. The proposed contract will provide for the purchase of approximately seventy-eight, or such other quantity as may be approved by the Office of the Secretary of Defense, Model A-6A aircraft and such related supplies and services as may be necessary and incidental to the initial use of the equipment. Such related supplies and services consist of tests, design data, bill of materials, publications, training parts for formal schools, factory training, spares and spare parts, procurement method coding and special support equipment and repair parts therefor.
2. The A-6A aircraft has been expressly described as "highly technical and specialized" by cognizant Navy engineering personnel. Deliveries are required to commence in January 1969 and end in December 1969.
3. The manufacture of the A-6A aircraft requires a detailed familiarity with the design, engineering and production aspects of the aircraft. Grumman Aircraft Engineering Corporation, as designer, developer, and sole producer of the A-6A aircraft, is the only source possessing the necessary technical knowledge, experience and production facilities to meet the Government's delivery requirements. Any other manufacturer would be required to duplicate to a considerable extent, the preparation for manufacture that has already been accomplished by Grumman and would, therefore, be unable to meet either the initial or terminal delivery requirement. Accordingly, the use of formal advertising for the procurement of the A-6A aircraft and its related supplies and services is neither feasible nor practicable.

Determinations

1. The supplies to be procured under the proposed contract are of a technical and specialized nature.

Government Exhibit 34

HASC DIF No. 0001-63

2. The supplies to be procured under the proposed contract are such as to require an extended period of preparation for manufacture.
3. Procurement by formal advertising would result in duplication of necessary preparation which would unduly delay the procurement.

Date JAN 24 1967

Greene C. Bannerman

Greene C. Bannerman
Assistant Secretary of the Navy
Installations and Logistics

Government Exhibit 34

UNCLASSIFIED**DETERMINATION AND FINDINGS****Authority to Negotiate an Individual Contract**

NAVAIR DAF No. 0493-70

Upon the basis of the following findings and determination which I hereby make as Agency Head, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(14).

Findings

1. The proposed contract will provide for the purchase of approximately eleven (11) model E-2C aircraft, or such other quantity as may be approved by the Office of the Secretary of Defense, together with design data, reports, drawings, tests, trainers, training parts for formal schools, spare and repair parts, Procurement Method Coding, ground support equipment, ground support equipment documentation, and an Integrated Logistic Support Management Program. The E-2C is deemed to be of a technical or special nature within the meaning of paragraph 3-214 of the Armed Services Procurement Regulation.
2. The manufacture of the E-2C aircraft requires a detailed familiarity with its design and related specifications as well as an extensive production engineering and time consuming physical preparation. Deliveries of the aircraft are required to commence February 1973 and be completed in December 1973. Grumman Aerospace Corporation designed, developed and is the sole producer of the E-2A/B aircraft, conducted Contract Definition for the E-2C, and is currently performing Engineering Developments for the E-2C. Therefore, Grumman possesses the necessary detailed familiarity with the E-2C's design and specifications and can meet the required delivery schedule. No other supplier possessing the special skills and knowledge necessary to manufacture acceptable aircraft in time to meet the delivery schedule is known. Accordingly, manufacture by any supplier other than Grumman would result in duplication of preparation for manufacture which would unduly delay delivery of the required aircraft.
3. Use of formal advertising for procurement of the above described aircraft is impracticable because such method may result in procurement from another source which would require duplication of necessary preparation and thereby delay the delivery of this aircraft.

Determination

The proposed contract is for equipment of a technical or specialized nature which requires an extended period of preparation for manufacture, and procurement thereof by formal advertising would result in duplication of necessary preparation which would unduly delay delivery of the aircraft.

Date

27 NOV 1970

Frank Sandusky
 Frank Sandusky
 Assistant Secretary
 (Installations and E)

UNCLASSIFIED

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

JOHN R. MARTIN, ROBERT J. RUTKOWSKI and THEIL
TECHNICAL SERVICES, INCORPORATED,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

**AFFIDAVIT
OF SERVICE**

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Juan Delgado , being duly sworn, deposes and says that he
is over the age of 18 years, is not a party to the action, and resides
at 596 Riverside Drive, New York, New York.
That on April 2, 1975 , he served 1 copies of Appendix
and 2 copies of Brief of Appellants John R. Martin and Theil
on Technical Services, Inc.

DAVID G. TRAGER,
U. S. Attorney,
Eastern District of New York,
Attorney for Appellee,
225 Cadman Plaza East
Brooklyn, New York, 11201

by delivering to and leaving same with a proper person or persons in
charge of the office or offices at the above address or addresses during
the usual business hours of said day.

Sworn to before me this
2nd day of April

, 19 75

Juan Delgado

Charles J. Esposito

CHARLES J. ESPOSITO
Notary Public, State of New York
No. 30-1132025
Qualified in Nassau County
Commission Expires March 30, 1977

